STATE OF ILLINOIS)
) SS.
COUNTY OF CHAMPAIGN)

☐ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TARA SMITH,

Petitioner,

14IWCC0251

vs.

NO: 12 WC 39030

UNIVERSITY OF ILLINOIS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, TTD, prospective medical care and PPD and being advised of the facts and law, reverses the Decision of the Arbitrator, finding Petitioner failed to prove that she sustained accidental injuries that arose out of and in the course of her employment on September 24, 2012.

The genesis of Petitioner's claim was that she fell to the ground after exiting a parking lot owned and under the control of Respondent. No testimony was given that Petitioner fell while in the parking lot, rather it was her testimony that she fell on the ground immediately adjacent to the parking lot, land that also is owned and under the control of Respondent. In finding accident and awarding benefits, the presiding Arbitrator attributed to Petitioner testimony of her believing that the uneven ground and loose wood chips caused her to lose her balance. In doing so, the Commission finds the presiding Arbitrator misconstrued Petitioner's testimony.

In reviewing Petitioner's testimony, the Commission finds Petitioner never expressed a belief that the uneven ground and loose wood chips caused her to lose her balance. Petitioner did, indeed, testify to the ground being uneven and to wood chips being present on the ground. At no time, however, did she attribute either to her falling. When asked on direct examination, "Do you know what caused you to loss [sic] your balance?," Petitioner answered, "I do not." Petitioner then affirmatively answered the follow-up question concerning the pieces of wood, bark and

14IWCC0251

mulch being loose. The Commission finds this question and answer cannot be a substitute for Petitioner's previously given answer that she did not know what caused her to lose her balance. Unless Petitioner testified that she slipped on wood, bark or mulch, their presence or their being loose is irrelevant.

The Commission further finds Petitioner's medical records from Carle Hospital do not support the history as written in the Arbitration Decision. In the order found in said medical records, Petitioner's injuries were the result of her having "tripped and fell," "tripping and falling," and "fell up the curb and fell on right shoulder." Absent from Petitioner's medical record is any mention as to what caused her to fall.

Two facts can be arrived at based on Petitioner's testimony and the evidentiary record. First, Petitioner fell and broke her arm. Second, there was debris on the ground. In the absence of any testimony or any record of any defect of the ground Petitioner walked upon as being the reason for her fall, the Commission must find these facts to be unrelated for the purposes of determining accident. To do otherwise, the Commission would have to engage in speculation or conjecture.

Based on Petitioner's testimony and her medical records, the Commission finds Petitioner suffered an unexplained, idiopathic fall on September 24, 2012, one that cannot be attributable to her employment. Accordingly, the Commission reverses the September 13, 2013, Arbitration Decision and, in doing so, denies, to Petitioner, any benefit under the Act

IT IS THEREFORE ORDERED BY THE COMMISSION that the September 13, 2013, Arbitration Decision is hereby reversed and compensation denied.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $58,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 4 2014
KWL/mav
O: 02/25/14
42

Kevin W. Lamborn

Daniel R. Donohoo

14IWCC0251

DISSENT

Respectfully, I dissent, Arbitrator Zanotti carefully reviewed this "slip and fall" accident which occurred on the property of Respondent, the University of Illinois.

Petitioner pays to park in the subject lot "B1". Petitioner's risk included the loose chips on the surface and the uneven ground, coupled with the increased risk of traversing this route on a regular basis. Petitioner parked in her designated parking lot, cut across a part of a small area of earth and wood-chips, and lost her balance while walking across the loose wood-chips on an uneven surface between the parking lot and her work place on campus.

The Arbitrator thoroughly analyzed all the case law presented by both sides. His decision is supported by the most recent case law, and the Arbitrator makes special note of Petitioner's credibility. He found her to be a very credible witness, who testified in a forthcoming and honest manner. He noted she was confident in her responses, and testified in a very open manner during cross-examination.

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0251

SMITH, TARA
Employee/Petitioner

Case# **12WC039030**

UNIVERSITY OF ILLINOIS
Employer/Respondent

On 9/13/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.03% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2028 RIDGE & DOWNES LLC
JOHN E MITCHELL
415 N E JEFFERSON AVE
PEORIA, IL 61603

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

0522 THOMAS MAMER & HAUGHEY LLP
ERIC CHOVANCE
P O BOX 560
CHAMPAIGN, IL 61824

1073 UNIVERSITY OF ILLINOIS
OFFICE OF CLAIMS MANAGEMENT
100 TRADE CENTER DR
SUITE 103
CHAMPAIGN, IL 61820

0904 STATE UNIVERSITY RETIREMENT SYS
PO BOX 2710 STATION A*
CHAMPAIGN, IL 61825

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

SEP 13 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 14IWCC0251

TARA SMITH
Employee/Petitioner

v.

UNIVERSITY OF ILLINOIS
Employer/Respondent

Case # 12 WC 39030

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Urbana**, on **July 18, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☒ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On **September 24, 2012,** Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$53,800.00**; the average weekly wage was **$954.21**.

On the date of accident, Petitioner was **38** years of age, ***single*** with **2** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$59,360.19** under Section 8(j) of the Act.

ORDER

Respondent shall pay for reasonable and necessary medical services set forth in Petitioner's exhibits (as more fully discussed in the Memorandum of Decision of Arbitrator), as provided in Section 8(a) of the Act, and subject to the medical fee schedule, Section 8.2 of the Act. Respondent shall have credit for bills paid under Section 8(j) of the Act, as noted above.

Respondent shall pay Petitioner temporary total disability benefits of $636.14/week for 2 1/7 weeks, commencing September 24, 2012 through September 30, 2012, and for the dates of October 2, 4, 5, 9, 10, 12, 16, and 22, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner temporary partial disability benefits totaling $1,484.59 (dates and calculations discussed in the Memorandum of Decision of Arbitrator), as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $572.53/week for 94.875 weeks, because the injuries sustained caused the 37.5% loss of use of the right arm, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

09/10/2013
Date

SEP 13 2013

STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

TARA SMITH
Employee/Petitioner

14IWCC0251

v.

Case# 12 WC 39030

UNIVERSITY OF ILLINOIS
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

This case involves a "slip and fall" injury on the property of Respondent, the University of Illinois, when Petitioner, Tara Smith, was leaving her vehicle and traversing Respondent's premises on her way to her office on the morning of September 24, 2012.

Respondent affords its employees parking in lots on its campus. At all relevant times herein, Petitioner parked in Lot B-1, which was the closest provided parking lot to her office. The lots are maintained, operated, monitored and patrolled by Respondent. Respondent's campus is extensive.

Employees and faculty must apply with Respondent to secure a parking permit to park in its lots. Respondent charges a fee for the permit. Petitioner testified that the lot in which she parks, Lot B-1, holds approximately 200 cars. Parking lot permits issued by Respondent constitute the identification required to avoid ticketing and thus being fined by Respondent's parking enforcement agents. (See also Respondent's Exhibit (RX) 2, p. 1). The sign depicted in Respondent's Exhibit 2, page 1, establishes that Respondent controlled the lot in question. There were also about 15 parking meters in the lot for public parking.

The parking in designated lots is available only to faculty and employees, with the exception of the limited number of metered-spots. Photographic exhibits portray appearance of the earthen area between the parking lot curb and the adjacent sidewalk. (See PX 3(c) and (d)). Respondent's Exhibit 2, page 1, discloses the permit requirement for the parking lot. Respondent's Exhibit 2, page 2, depicts where Petitioner had parked on the day of the alleged accident, and Respondent's Exhibit 2, page 3, depicts the general condition of the area between the parking lot and sidewalk, as well as an exit.

Petitioner parked at her typical and usual parking location on the morning of September 24, 2012. She parked up to the parking lot curb. In between that area was what she described as an uneven surface, with soil, mulch and tree bark, which she crossed on prior occasions and which other employees also used to cross to and from the parking lot. It was her usual way to her work location. The bark was loose, not embedded into the soil. The surface of the earth was disclosed in Respondent's Exhibit 2, page 3, and in

Petitioner's Exhibits 3(c) and (d). As Petitioner crossed that area, she slipped, losing her balance and propelling herself forward toward the sidewalk and the street. She then took some faltering steps and collided with an automobile, striking it with her right arm. Petitioner's description as to what occurred is un-rebutted. A co-employee saw the incident and called an ambulance, which transported Petitioner to Carle Hospital.

Petitioner agreed that she could have walked through the parking lot to the street entrance, and crossed without going over the area where she began her fall. However, she testified that she and other employees of Respondent take this path regularly, and she has never been reprimanded for crossing in this area. She also testified that there was no type of impediment present to block crossing that area, such as a fence or guardrail. No warning signs appear in the photographic exhibits.

The next morning following her fall and presentation to the hospital, Petitioner underwent surgery by Dr. Mark Palermo, an orthopedic surgeon. The surgeon described the fracture as a long oblique-type fracture and as a long spiral-type fracture. He performed an open reduction with internal fixation involving screws into the fracture site to maintain reduction, an 8-hole plate along the lateral aspect of the humerus, and insertion of 6 screws to secure the plate. Petitioner was discharged from the hospital on September 28, 2012. (PX 1). Petitioner experienced discomfort during the course of her prescribed physical therapy. She complained of her shoulder and obtained an order for MRI testing, which was performed on November 8, 2012 at Carle. While the integrity of the rotator cuff was maintained, there was bone marrow edema localized to the greater tuberosity of the humeral head, which is associated with a subtle linear disruption of the trabecular pattern in this area. A small non-displaced greater tuberosity fracture was suspected. (PX 2).

In his last note, Dr. Palermo recommended Petitioner continue strengthening her right shoulder. He noted she had pain with forward elevation of the scapular plane greater than 90 degrees and with external rotation, as well as some pain with internal rotation. Elbow and wrist motion were noted as good. X-rays disclosed a healed humeral shaft fracture with the hardware in place. The doctor's resultant impression was that of open reduction with internal fixation of the right humerus. Dr. Palermo believed Petitioner would benefit from strengthening exercises of the right shoulder, and noted she was to return in six weeks to see how she progressed. (PX 2). Petitioner did not return.

Petitioner continues to perform home exercises. She has constant pain in her shoulder of varying degrees. She can lift her arm overhead but it aches. She has limited motion with her right upper extremity at the shoulder. Because of the lack of strength in her shoulder, Petitioner has difficulty lifting items at home and decorating for holidays. She can reach behind her back with her right arm, but it is harder to do so than before the September 2012 injury. Petitioner denied having any prior right shoulder or arm injuries or difficulties prior to the September 2012 injury, and further denied any intervening injury to her right shoulder or arm after that event.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

In order for an injury to be compensable under the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"), the injury must arise out of and in the course of the employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d 52, 57, 541 N.E.2d 665 (1989). The Arbitrator turns first to the "arising out of" component. The facts disclosed that Respondent maintained and controlled the parking lot where Petitioner parked. Respondent enforces its parking areas and fines those who are not

allowed to park in its lots. The lot in question was on Respondent's campus. Permits were required to park in an individual lot. Petitioner had parked her vehicle in her regular, designated lot on the morning of September 24, 2012, shortly before her work day was to begin. She crossed an area between the parking lot and the adjacent side of which consisted of an uneven, somewhat mounded area of dirt and loose wood chips. As she crossed that area, she slipped. She was not completely certain what caused her to lose her balance, but she believed the uneven ground and loose wood chips were what caused her loss of balance. No other reason was expressed or established for her injury.

An accident "arises out of" one's employment if the origin of the accident is a risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Jewel Companies, Inc. v. Industrial Comm'n*, 57 Ill.2d 38, 40, 310 N.E.2d 12 (1974). The risk is incidental to the employment where it belongs to or is connected with what the employee has to do in fulfilling his duty. *Orsini v. Industrial Comm'n*, 117 Ill.2d 38, 45, 509 N.E.2d 1005 (1987). Petitioner's risks included the loose wood chips on the surface and the uneven ground, coupled with the increased risk of traversing this route on a regular basis. Petitioner parked in her designated parking lot, cut across a part of a small area of earth and wood chips, and lost her balance while walking across the loose wood chips on an uneven surface between the parking lot and her work place on campus. In *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App. 3d 486, 812 N.E.2d 401 (5th Dist. 2004), an employee tripped over an uneven sidewalk connected to the parking lot of the work place, and that incident was found to be a work related injury. As an employee of Respondent, Petitioner was reasonably exposed to this risk on a regular basis.

The issue of whether the risk of injury is an increased risk may be either qualitative (such as some aspect of the employment which contributes to the risk), or quantitative (such as when the employee is exposed to a common risk more frequently than the general public). *Potenzo v. Ill. Workers' Comp. Comm'n*, 378 Ill. App. 3d 113, 117, 881 N.E.2d 523 (1st Dist. 2007). In this instance the risk is also a quantitative issue, as Petitioner's risk is greater than that of the general public. The parking lot was restricted primarily for the use of employees and not the general public, and Petitioner traversed the route in question regularly. Approximately 15 parking spots were available for the public, and Petitioner's description indicated those were at a different area in the parking lot, not near the soil and wood chip area in question. It was that area which contributed to Petitioner losing her balance and ultimately sustaining her injury. The area where she lost her balance was uneven and covered with loose pieces of what appears to be tree bark or wood chips.

Employment related risks associated with injuries sustained as a consequence of a fall are those to which the general public is not exposed, such as the risk of tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing work related tasks which contribute to the risk of falling. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106, 853 N.E.2d 799 (1st Dist. 2006). The condition of the area between the parking lot and the sidewalk on Respondent's campus increased the risk of falling. When the injury to an employee takes place in an area that is the usual route to the employer's premises, and the route is attended with a special risk or hazard, the hazard becomes part of the employment. In *Litchfield Healthcare Center*, cited *supra*, the decision did not rest solely upon the claimant's regular use of a specific parking lot, but also that the sidewalk involved in the claimant's injury was uneven. Here, there is sufficient proof that Petitioner did encounter a special risk or hazard in the uneven area that was also covered with loose wood chips. It was an area to which she had greater exposure than the general public. The ratio of an employee of Respondent to the general public using the parking lot in question is *de minimis*. The facts in the record confirm as such.

Respondent argues that the following cases are applicable in this matter: *Dodson v. Industrial Comm'n*, 308 Ill. App. 3d 572, 720 N.E.2d 275 (5th Dist. 1999); *Hatfill v. Industrial Comm'n*, 202 Ill. App. 3d 547, 560 N.E.2d 369 (4th Dist. 1990); and *Warden v. Advent Systems, Inc.*, 02 IIC 73 (Jan. 29, 2002). The Arbitrator finds these cases distinguishable as to the issue of accident.

In *Dodson*, the employee traversed a grassy slope as opposed to using the typical path to the parking lot to reach her automobile when leaving from work, due to the fact that it was raining and this route provided a shorter distance to the driver's side of her parked vehicle. She fell and injured herself in the process. In *Hatfill*, the employee, when leaving from work and going to his vehicle, jumped across some water which had accumulated at the base of the five-foot incline going to the upper level parking area, and upon landing, injured himself. In the Commission decision of *Warden*, the employee voluntarily took a short cut from his vehicle to his work building, and in doing so had to "scramble up" [words used in decision] an inclined embankment. He injured his right knee in the process. The Court in *Dodson* and *Hatfill*, and the Commission in *Warden*, found that the respective employees did not establish their burden of proving the "arising out of" element of the accident issue. It was found that the paths these employees took which led to their respective injuries were personal risks for their own benefit, and that they placed themselves in unnecessary danger by taking these routes. The Arbitrator also points out the Commission decision of *Dascotte v. So. Ill. University*, 12 IWCC 944 (Sept. 4, 2012), in which the Commission found that the employee did not sustain an accident that arose out of her employment. In *Dascotte*, the employee took a short cut when leaving her vehicle and walking to her place of work, as she was "running late." This short cut involved physically traversing over a chain link fence, which the employee tripped over, causing injury.

The Arbitrator notes that in the foregoing cases (*Dodson*, *Hatfill*, *Warden* and *Dascotte*), the respective employees were not taking a usual and customary route when either coming from or going to the parking lot at their places of work, as Petitioner did in the instant case. In each of those cases, the employee was taking a route that was not normally taken. In *Dodson*, the employee was attempting to cut down on time traveling in the rain and traversed a grassy slope to reach her car sooner. In *Hatfill*, the employee *jumped* over a pool of accumulated water. In *Warden*, the employee "*scrambled up*" an inclined embankment. In *Dascotte*, the employee traversed over a chain link fence in order to take a short cut because she was "running late." None of the foregoing reasons for taking the routes in question in those cases are present in the case at bar. Petitioner credibly testified that it is normal and usual for her to take the route in question across the earthen area. She credibly testified that other employees of Respondent do the same. Respondent has not informed Petitioner not to take this path, nor is there any warning or guardrails to prevent the same. Further, given the analysis of the photographs in evidence, the Arbitrator finds Petitioner's explanation for the reasoning in taking the path in question reasonable.

As to the issue of "in the course of" employment, Petitioner was performing an act which was a reasonable activity in conjunction with her employment – parking her car and walking to her work station. She parked in Respondent's lot designated for employees like her, and was traversing across Respondent's campus during the time of accident. The Appellate Court has recognized that accidental injuries sustained on the employer's premises within a reasonable time before and after work are generally deemed to occur in the course of the employment. *Caterpillar Tractor Co.*, 129 Ill.2d at 57. The Arbitrator thus finds that Petitioner's accident was in the course of her employment.

The Arbitrator also makes note of Petitioner's credibility when taking into account her testimony regarding the accident. The Arbitrator found Petitioner to be a very credible witness at trial. She testified in a forthcoming and honest manner. She was confident in her responses, and testified in a very open manner

during cross-examination. She was very pleasant, polite and well-mannered, and made an excellent and credible witness.

Based on the foregoing, the Arbitrator finds that Petitioner sustained an accidental injury arising out of and in the course of her employment by Respondent.

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

At the hospital following the accident, the injury was identified as a spiral fracture of the right humerus with the need for multiple screws. Petitioner credibly testified that she had not experienced any problems with her right upper extremity prior to the accident, which stands un-rebutted. Petitioner described slamming into a parked vehicle after she fell. Respondent put forth no evidence that Petitioner had any prior condition of ill-being. Immediately after the incident, Petitioner was taken by ambulance to the hospital and surgical intervention was required. The history recorded in the medical records is consistent with Petitioner's testimony about her incident at work. The Arbitrator therefore finds that Petitioner's condition of ill-being with regard to her right shoulder and arm is causally related to the accident of September 24, 2012.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Respondent disputed responsibility for unpaid medical bills only on the basis of liability. Having found that Petitioner sustained an accidental injury at work and that her condition of ill-being is causally related to that injury, the Arbitrator finds that the medical services rendered to Petitioner were reasonable and necessary. After reviewing the invoices for medical services at issue, the Arbitrator also finds that the medical bills submitted are reasonable and necessary. As such, Respondent is liable for said medical expenses, subject to the medical fee schedule, Section 8.2 of the Act.

Pursuant to Petitioner's Exhibit 5, medical bills totaled as follows:

• Carle Hospital	$43,176.19
• Carle Physician Group	$13,892.00
• Carle Hospital (pt. II)	$2,927.00
• Arrow Ambulance	$890.50
TOTAL	$60,885.69

Respondent shall pay any of the foregoing medical expenses that remain unpaid. Respondent, through its group insurance pursuant to Section 8(j) of the Act, paid medical bills in the amount of $59,060.19 for which it is allowed credit. (See Arbitrator's Exhibit (AX) 1).

Issue (K): What total temporary benefits are in dispute? (TTD; TPD)

After reviewing Petitioner's Exhibit 6, and taking into account the credible testimony of Petitioner, the record establishes that Petitioner normally works 7.5 hours per day. Petitioner's Exhibit 6 discloses the number of hours that she worked and those days for which she received "sick time" during all relevant time periods in question. Each page in Petitioner's Exhibit 6 represents two weeks. Petitioner returned to work before she was released, working both part-time and ultimately full-time because of lack of income. Petitioner worked several hours from home after the accident.

Adding all of the time lost for which Petitioner was not given workers' compensation benefits, Petitioner lost 87.5 hours. (See the following dates from 2012 in PX 6: October 1, 3, 8, 11, 15, 17, 18, 19, 23, 24, 25, 26, 29, 30, 31; November 1, 2, 5, 6, 7, 8; and December 10). No evidence was submitted establishing the nature of her sick time. Her vacation time is a benefit to which she is entitled regardless of whether she is working or not, so that is not a credit against temporary partial or temporary total disability benefits. Respondent submitted no information indicating the withholding from Petitioner's wages during the temporary partial working period.

Petitioner's stipulated average weekly wage is $954.21. (AX 1). Her hourly rate is therefore $25.45. With regard to the 87.5 hours missed from work on the dates listed above, she lost $2,226.88 in wages ($25.45 x 87.5 hours). Two-thirds of that wage is $1,484.59. Therefore, Respondent shall pay Petitioner the amount of $1,484.59 in temporary partial disability (TPD) benefits pursuant to Section 8(a) of the Act.

Petitioner was unable to work from the date of her accident, September 24, 2012, through September 30, 2012 (representing 1 week), and then again on the following dates in 2012 pursuant to Petitioner's Exhibit 6: October 2, 4, 5, 9, 10, 12, 16, and 22 (representing 1 1/7 weeks). Respondent shall therefore pay Petitioner temporary total disability benefits for 2 1/7 weeks.

Issue (L): What is the nature and extent of the injury?

Petitioner's date of accident falls after September 1, 2011, and therefore Section 8.1b of the Act shall be discussed concerning permanency. It is noted when discussing the permanency award being issued that no permanent partial disability impairment report pursuant to Sections 8.1b(a) and 8.1b(b)(i) of the Act was offered into evidence by either party. This factor is thereby waived.

Concerning Section 8.1b(b)(ii) of the Act (Petitioner's occupation), the record is scant with details concerning Petitioner's occupation with Respondent. Petitioner discussed working in a building on Respondent's campus, and the record establishes that she was able to perform part of her job duties at home, suggesting a sedentary position. Given the lack of evidence in this regard, very little weight is placed on this factor in determining permanency.

Concerning Section 8.1b(b)(iii) of the Act (Petitioner's age at the time of the injury), Petitioner was 38 years of age on September 24, 2012. The Arbitrator considers Petitioner to be a younger individual and concludes that Petitioner's permanency will be more extensive than that of an older individual because she will have to live and work with the permanent partial disability longer. Ample weight is placed on this factor when determining the permanency award.

Concerning Section 8.1b(b)(iv) of the Act (Petitioner's future earning capacity), no evidence was introduced concerning this factor, and therefore no weight is given in this regard.

With regard to Section 8.1b(b)(v) of the Act (evidence of disability corroborated by Petitioner's treating medical records), Petitioner suffered a spiral fracture of the right humeral shaft necessitating an open reduction and internal fixation with both plates and multiple screws. In addition to the injury to the arm, MRI testing following the surgery disclosed linear disruption of the trabecular pattern in the greater tuberosity aspect to humeral head with the suspicion of a small non-displaced fracture of the greater tuberosity. Petitioner returned to work with no restrictions less than two months after the work accident. Petitioner testified to continued pain with her arm, and difficulty with lifting. Her range of motion became limited as a

result of the accident. The Arbitrator notes these complaints are credible and consistent with Petitioner's injuries and resulting surgery. Great weight is afforded this factor when determining the permanency award.

Based on the foregoing, the Arbitrator finds that Petitioner has sustained injuries that caused the 37.5% loss of use of the right arm pursuant to Section 8(e) of the Act, and is awarded permanent partial disability benefits accordingly.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☐ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

COLLEEN KELLER,

Petitioner,

14IWCC0252

vs. NO: 12 WC 31459

PROVENA VILLA FRANCISCAN NURSING HOME,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19 having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses and TTD and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

On April 23, 2013, the Arbitrator caused a 19(b) Decision of Arbitrator to be filed with the Commission, one in which it was found Petitioner failed to satisfy her burden of proving that the current condition of her left shoulder and left upper extremity is related to the uncontested workplace accident of August 27, 2012. In explaining his finding, the Arbitrator noted that he sustained the objections to the admissions of Petitioner's Exhibit A, Exhibit D, and Exhibit E and received these exhibits only as rejected exhibits. He went on to provide additional support for his finding by noting that he found Respondent's examining physician, Dr. Gregory Primus to be more credible than Petitioner's treating physician, Dr. David Burt. The Commission finds the Arbitrator's decision denies Petitioner due process of law and requires the Commission to modify the decision.

As noted above, the Arbitrator wrote in his 19(b) Decision of Arbitrator that he sustained objections made by Respondent to the admission of the above referenced exhibits and accepted those exhibits as rejected exhibits only. The Commission finds, after reviewing the transcript of arbitration proceedings, that Petitioner's Exhibit A, Petitioner's Exhibit D and specific pages contained within Petitioner's Exhibit E were conditionally admitted into evidence, with Petitioner's Exhibit A and Petitioner's Exhibit D admitted conditionally so. Exhibit A, referred to in the decision as PX1, was "accepted" by the Arbitrator subject to his "reviewing what is objected to . . . ." He reiterated this, stating, "I will accept [Exhibit A] subject to me ruling in the award . . . I will accept PX1." He then admitted Petitioner's Exhibit D, twice stating it admitted the exhibit under Section 16 of the Act, and suggested that the objections be restated in the proposed findings. In addressing Respondent's objection to the admission of records contained in Petitioner's Exhibit E, pages 1, 3, and 4 of that exhibit were admitted but, again, requested that Respondent "make [its] evidence in [the] proposed findings." The Commission finds deferring a final decision concerning an objection until it is argued further in the proposed findings to be inappropriate and admits these exhibits, except as articulated below.

The Commission addresses Respondent's position that Petitioner's Exhibit A is inadmissible as it not being true, correct and complete, contrary to the statement contained in the Records Certification that it is. Certification of records, under the Act, allows for those records to "be admissible without any further proof as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters" and goes onto state, "[t]his paragraph does not restrict, limit or prevent the admissibility of records, reports, or bills that are otherwise admissible." 820 ILCS 305/16 (2014). Unlike Section 6(c) of the Act, Section 16 of the Act does not address defects concerning certified records. Illinois case law appears to be silent with respect to defective certification as the only case law found that addressed certification concerned itself with the admissibility of records that were uncertified.

The defect, that allows Respondent to make its objection to the admission of Petitioner's Exhibit A, in the instant matter is a single record, a work slip that excused Petitioner from work until the prescribed MRI could be performed. The absence of this document renders the certification "that the records submitted herewith are true and correct; and are a complete set of all the records in my/our possession or control . . . .", as Arbitrator Andros noted, inaccurate. It does not, by itself, render the information contained within the records untrustworthy, and its absence should be found to be *di minimis*.

To the extent any record contained within Petitioner's Exhibit A should be excluded, the Commission finds Dr. Burt's November 29, 2012, note in which he expresses an opinion concerning causation to be inadmissible as it appears to have be included for litigation purposes as the opinion was expressed only after two examinations of Petitioner had occurred and only after Dr. Primus opined that Petitioner's injury was not related to her August 27, 2012, workplace accident.

As stated above, except as indicated, the Commission admits Petitioner's Exhibit A, Petitioner's Exhibit D and Petitioner's Exhibit E in evidence and, in weighing the evidentiary value of the contents within these exhibits, finds Petitioner's current condition of ill-being to be causally connected to her workplace accident of August 27, 2012.

The Commission next addresses the issue of Petitioner's incurred and prospective medical treatment and related expenses. Petitioner's medical records indicate attempts to treat her complaints conservatively failed, resulting in her eventually undergoing surgery to her left shoulder. The Arbitrator noted that the evidence of multi-ligament laxity with an abnormal signal in the anterior labrum was a pre-existing condition and made a "special finding of fact" that Petitioner's arthroscopic surgery was not medically necessary. The Commission is uncertain as to how the Arbitrator arrived at the decision he did concerning Petitioner's pre-accident health as it finds nothing in the record, including Dr. Primus' IME report, that hints at the condition of Petitioner's left shoulder being a pre-existing one. Further uncertainty exists with respect to the Arbitrator's conclusion that Petitioner's surgery was not unnecessary given the post-surgery diagnoses of tearing of the mid-anterior labrum with inner edge fraying, posterior-superior undersurface partial tearing and subacromial bursitis. The Commission finds Petitioner's failure to respond to conservative treatment measures combined with Dr. Burt's surgical findings to be sufficient to warrant a finding that Petitioner's surgery, and the treatment that led up to it, were medically reasonable and necessary to treat the aftereffects of Petitioner's August 27, 2012, workplace accident.

The Commission last addresses the issue of Petitioner's entitlement to TTD benefits. The Arbitrator found Petitioner was not entitled to TTD benefits, noting that Petitioner declined an offer of light duty work that Respondent believed to be within her work restrictions. In doing so, the Arbitrator relied on the opinions of Dr. Primus and Dr. Anne Li, both of whom opined Petitioner could work with restrictions. The Commission finds the denial of TTD benefits through the date of surgery to be appropriate as Petitioner failed to prove that she was unable to perform the light duty work that was offered her, but the Commission also finds that the surgery, which was found above to be compensable, rendered Petitioner unable to work even in the light duty capacity that was offered her. The Commission, therefore, finds Petitioner to be entitled to TTD benefits from the date of the surgery, December 14, 2012, through the date of the arbitration hearing, January 16, 2013.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $321.60 per week for a period of 4-5/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner for medical expenses under §8(a) of the Act incurred both prior to the January 16, 2013, arbitration hearing.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0252

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $1,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 4 - 2014
KWL/mav
O: 02/10/14
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0252

KELLER, COLLEEN
Employee/Petitioner

Case# 12WC031459

PROVENA VILLA FRANCISCAN NURSING HOME
Employer/Respondent

On 4/23/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0073 LAW OFFICE OF KEVIN M O'BRIEN
407 S DEARBORN ST
SUITE 1125
CHICAGO, IL 60605

2965 KEEFE CAMPBELL BIERY & ASSOC LLC
NATHAN S BERNARD
118 N CLINTON ST SUITE 300
CHICAGO, IL 60661

STATE OF ILLINOIS)
)SS.
COUNTY OF Will)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0252

Colleen Keller
Employee/Petitioner

v.

Provena Villa Franciscan Nursing Home
Employer/Respondent

Case # 12 WC 31459

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **George Andros**, Arbitrator of the Commission, in the city of **New Lenox**, on **January 16, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☒ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **August 27, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being **is not** causally related to the accident.

Petitioner is not entitled to temporary total disability.

In the year preceding the injury, Petitioner earned **$24,960.00**; the average weekly wage was **$480.00**.

On the date of accident, Petitioner was **35** years of age, ***single*** with **0** dependent children.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

The Arbitrator finds as a matter of law and fact the Petitioner is not entitled to compensation and not entitled to medical treatment for shoulder surgery under the Workers Compensation Act, as amended.

STATEMENT OF FACTS

Petitioner testified to employment with Provena Villa Franciscan Nursing Home as a C.N.A. since October 2011. On August 27, 2012, Petitioner testified she attempted to log roll a 300-lb leg amputee nursing home resident and complained of left shoulder pain. Petitioner testified she did not use any lifting assistance device although she was trained in the use of same. She asserts this was neither possible nor practical. Petitioner worked the remainder of the shift and presented to Provena Emergency Department. On August 28, 2012, Petitioner was placed on the following work restrictions of no carrying or lifting greater than 5 pounds, no pushing or pulling greater than 20 pounds and no reaching above left shoulder. On September 6, 2012, Dr. Anne Li recommended restrictions of no carrying or lifting greater than 5 pounds, no pushing or pulling greater than 25 pounds, and no reaching above left shoulder.

On September 10, 2012, Provena Villa Franciscan Nursing Home offered accommodation of duty--feeding residents as well as terminal cleaning of resident's rooms. Petitioner testified she received the offer of duty accommodating her restrictions. Claimant refused to return to work because of her opinion the offer was not in accordance with restrictions. In making that statement, Petitioner testified she did not review a Provena Villa Franciscan Nursing Home job description. There is also no medical report or other review of the job accommodations in the record.

H.R. Manager Deborah Shrum testified to working at Provena Villa Franciscan Nursing Home for thirty-seven years. Deborah Shrum testified the undisputed job offer to feed residents and clean resident's rooms was a modified position in accordance with restrictions outlined by Dr. Li of no carrying or lifting greater than 5 pounds, no pushing or pulling greater than 25 pounds, and no reaching above left shoulder.

On November 2, 2012, Petitioner underwent a section 12 examination at respondent's request by Dr. Gregory Primus, an orthopedic surgeon. Dr Primus opined Petitioner's problems began while simply performing a pulling maneuver. He felt she strained the biceps tendon and possibly her rotator cuff. Dr. Primus diagnosed generalized multi-ligament laxity with abnormal signal in the anterior labrum which was a pre-existing condition. Dr. Primus opined arthroscopic surgery not necessary at that time as objective findings did not support subjective complaints. Dr. Primus recommended lifting restrictions of no greater than 25 pounds or lift greater than 10 pounds overhead with MMI after another 4-6 weeks

Petitioner treated with Dr. David Burt at Midwest Sports Medicine Institute from August 30, 2012 to December 21, 2012 with follow-up in three weeks. Dr. Burt recommended complete off work restrictions, reviewed the IME, disagreed with the opinions of Dr. Primus, and recommended arthroscopic exam of the shoulder with possible labral repair and treatment of the biceps and/or rotator cuff. On December 14, 2012 Dr. Burt performed arthroscopic debridement of partial undersurface rotator cuff tear and anterior mid labrum and subacromial decompression and bursectomy on Petitioner.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision regarding the question of whether an accident occurred which arose out of and in the course of the Petitioner's employment by the Respondent, the Arbitrator finds the following facts and makes the following rulings:

This Arbitrator reviewed the documentary evidence and carefully considered the testimony.

Petitioner testified to attempting to log roll a 300-lb leg amputee nursing home resident and complained of left shoulder pain. Dr. Primus noted Petitioner was simply performing a pulling maneuver and strained the biceps tendon and possibly the rotator cuff.

Based upon the totality of the evidence the Arbitrator finds Petitioner did sustain an accidental injury that arose out of and in the course of employment.

In support of the Arbitrator's decision regarding the question of whether Petitioner's present condition of ill-being is causally related to the injury, the Arbitrator finds the following facts and makes the following rulings:

Respondent's counsel objected to the accuracy and completeness of Dr. Burt's records as Petitioner counsel admitted on the record some of the treatment records were absent from Petitioner Exhibit A. This rendered the certification of Dr. Burt's records as correct and complete copies as inaccurate. The Arbitrator finds the records are untrustworthy.

Respondent's counsel also proffered a hearsay objection to the causal connection opinion of Dr. Burt without a chance for cross-examination. The Arbitrator rules this opinion was not medical care but created in anticipation of this litigation.

Finally, Respondent's counsel objected to Petitioner's testimony laying a foundation for her own medical records. There is no indication Claimant created the records, stored them or can vouch for their accuracy or completeness. Thus, it is disregarded.

For all these reasons, the Arbitrator sustains the objections to Petitioners' exhibits A, D, and E and the documents are received as rejected exhibits only.

This Arbitrator also strikes the opinions of Dr. Burt under Illinois Rules of Evidence 801. Dr. Burt reviewed the IME report and disagreed with the opinions of Dr. Primus. Dr. Burt did not testify at the arbitration hearing or via deposition. In this case, there is no exception to the hearsay rule under which records may be admitted if the other side objects and desires cross-examination. Only by agreement can such hearsay documents be received into evidence. There was no agreement here.

Notwithstanding the rulings above, this Arbitrator finds as a matter of fact the opinions of Dr. Primus more persuasive and more analytical than those of Dr. Burt.. This Arbitrator is not required to accept the opinion of a treating physician over that of an examining doctor, and may give more weight to the opinions of an examining physician over a treating physician as the facts warrant. *Prairie Farms Dairy v. Industrial Commission, (1996) 279 Ill. App. 3d 546, 664 N.E.2d 1150.*

In support of the Arbitrator's findings relating the reasonableness and necessity of the medical treatment plus the need for prospective medical treatment allegedly related to the accident at bar, the Arbitrator finds as follows:

The Arbitrator further finds as fact Petitioner was simply performing a pulling maneuver and strained the biceps tendon and possibly rotator cuff sustaining multi-ligament laxity with abnormal signal in the anterior labrum which was a pre-existing condition.

The Arbitrator makes a special finding of fact the Arthroscopic surgery was not medically necessary.

Based upon the totality of the evidence this Arbitrator finds medical services provided to Petitioner were reasonable and necessary up to the section 12 examination on November 2, 2012. This Arbitrator finds medical services provided after November 2, 2012 were not reasonable and necessary or related to the care recommended and provided. Specifically, arthroscopic surgery was not reasonably and necessarily related.

In support of the Arbitrator's decision regarding the question of what amount of compensation is due for temporary total disability, the Arbitrator finds the following facts and makes the following rulings:

The Arbitrator makes a finding of material fact that Provena Villa Franciscan Nursing Home offered accommodation of duty within restriction of feeding residents as well as terminal cleaning of resident's rooms. Petitioner testified she received the offer of accommodated duty but refused to return to work because she felt the offer was not in accordance with restrictions. Petitioner testified she did not review a Provena Villa Franciscan Nursing Home job description.

This Arbitrator finds the testimony of H.R. Manager Deborah Shrum, a thirty-seven-year employee, to be more accurate thus more credible than that of Petitioner on this issue. Deborah Shrum testified the offer to feed residents and clean resident's rooms was a modified position in accordance with restrictions of no carrying or lifting greater than 5 pounds, no pushing or pulling greater than 25 pounds, and no reaching above left shoulder. The Arbitrator adopts in total the testimony of Ms. Deborah Shrum.

This Arbitrator finds Dr. Primus as well as Dr. Li, both recommending light duty restriction, to be more persuasive than the opinions of Dr. Burt who recommended complete off work restrictions.

For these reasons, the Arbitrator finds as a matter of fact and law the Petitioner is not entitled to temporary total disability in the case at bar.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

01 George J. Andros
Signature of Arbitrator

April 19th, 2013
Date

ICArbDec19(b)

STATE OF ILLINOIS)
) SS.
COUNTY OF JEFFERSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Tate,
Petitioner,
vs.
Manpower,
Respondent,

NO: 12 WC 21427

14IWCC0253

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, medical expenses and permanency and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 20, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have 845.89 credit for temporary total disability payments, $1,760.00 credit for an advance in payment of workers' compensation benefits and $8,020.99 for a payment under Section 8(j) of the Act on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 4 2014

Mario Basurto

David L. Gore

Stephen Mathis

MB/jm
o:2/27/14
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ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

TATE, ROBERT
Employee/Petitioner

Case# **12WC021427**

14IWCC0253

MANPOWER INC
Employer/Respondent

On 3/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

2795 HENNESSY & ROACH PC
DAVID DOELLMAN
415 N 10TH ST SUITE 200
ST LOUIS, MO 63101

14IWCC0253

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Robert Tate
Employee/Petitioner

v.

Manpower, Inc.
Employer/Respondent

Case # **12** WC **21427**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah Simpson**, Arbitrator of the Commission, in the city of **Mt. Vernon, IL**, on **1/11/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [x] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On **4/10/12**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident with respect to the left hernia but Petitioner's right hernia condition ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$16,640.00**; the average weekly wage was **$320.00**.

On the date of accident, Petitioner was **29** years of age, ***single*** with **0** dependent children.

Petitioner ***has not*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$845.89** for TTD, $ for TPD, $ for maintenance, and **$1,760.00** for other benefits, for a total credit of **$2,605.89**.

Respondent is entitled to a credit of **$8,020.99** under Section 8(j) of the Act.

ORDER

The Respondent shall provide the Petitioner with TTD benefits from April 11, 2012 through April 19, 2012, as well as TTD benefits from July 23, 2012 through July 30, 2012, payable at a rate of $220.00. Respondent shall also provide Petitioner with PPD benefits with respect to the left hernia. Respondent is allowed a credit for TTD benefits previously paid in the amount of $845.89, as well as an additional credit for $1,760.00 in other benefits previously provided to Petitioner.

The Respondent shall also provide the Petitioner with the medical benefits related to the left hernia condition for treatment received prior to August 28, 2012 to the extent that it has not already done so. Respondent shall provide these benefits in accordance with the Illinois Fee Schedule.

The Respondent shall also provide the Petitioner with PPD benefits in the amount of 3% of the man as a whole measured at the 500-week level as compensation for Petitioner's left hernia condition. Petitioner is therefore entitled to 15 weeks of compensation measured at a PPD rate of $220.00, totaling $2,750.00. Again, however, Respondent is allowed an additional credit for the $1,760.00 in other benefits previously provided to Petitioner to the extent not already awarded herein.

No benefits are awarded with respect to the Petitioner's right hernia condition.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Deborah L. Simpson
Signature of Arbitrator

March 17, 2013
Date

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robert Tate,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 12 WC 21427**
	)	
Manpower,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on April 10, 2012 the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. On that date the Petitioner sustained an accidental injury or was last exposed to an occupational disease that arose out of and in the course of the employment, (as to the left hernia only). They further agree that the Petitioner gave the Respondent notice of the accident within the time limits stated in the Act.

At issue in this hearing is as follows: (1) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure (right hernia only); (2) were the medical services provided to the Petitioner reasonable and necessary and has the Respondent paid for all appropriate charges for reasonable and necessary medical services; (3)what temporary benefits are due to the Petitioner and what credit is due the Respondent for payments already made; and (4) the nature and extent of the injury.

FIND OF FACTS

The Petitioner testified that he is currently 29 years old and was employed at PLS in Mt. Vernon, Illinois at the time of his injury. He was placed at PLS through Manpower. The Petitioner indicated his job duties included loading and unloading semi-tires, including pushing them on pallets. He estimated that these tires weighed anywhere from 45 to 57 pounds.

The Petitioner testified that the day the injury occurred, he was pushing a pallet of tires and pulling one of the tires off of the pallet when it fell and struck him in the low abdomen. He did not feel any immediate pain and continued working throughout the day. However, the Petitioner indicated that pain then developed that night and the next morning.

The Petitioner further testified that Dr. Pruett's office addressed his pain and symptoms, and described his pain as being worse on the left side than on the right side. He indicated that the left side was operated on first and that he fully recovered.

The Petitioner testified that his right groin also began to hurt following the work accident. He believes he informed Dr. Pruett at the time of his left sided surgery about this pain. He indicted Dr. Pruett also performed surgery on the right hernia as well, which improved his symptoms. However, the Petitioner indicated that he suffered some complications after the right hernia surgery requiring an additional procedure to drain fluid. He testified that he believed Dr. Pruett performed this procedure free of charge.

The Petitioner testified that he fully recovered from his complications following his right hernia operation and was given a full duty release by Dr. Pruett. He stated he has some difficulties with lifting things and believes overall he may have lost some strength. Petitioner identified no additional limitations in his activities as a result of the work injury.

The Petitioner also testified that he began working light duty at the employer approximately one week following the injury of April 10, 2012. These tasks included clerical work such as answering phones, organizing papers, and other office work. The Petitioner testified he was able to perform these tasks without any additional pain.

The Petitioner further stated he worked in a light duty capacity and received his regular wages until his left hernia operation on July 23, 2012. He testified that he was then off of work following this surgery through July 31, 2012. The Petitioner indicated that he then began to work light duty once again and did so until his right hernia surgery on August 28, 2012. Again, the Petitioner indicated he received his regular pay during this time.

The Petitioner also testified that he has since returned to work on at least one occasion through Manpower for a few days in December 2012. The Petitioner stated he was actively seeking additional employment at this time.

A review of the Petitioner's medical records show that the Petitioner was seen at St. Mary's Good Samaritan Hospital on April 11, 2012 with complaints of lower abdomen pain. A CT of the abdomen and pelvis was performed which show no evidence of urinary bladder calculi, no hydronephrosis, no bowel obstruction and no gross pelvic lesions.

The Petitioner was then seen by Tammy Pike at WSI/Physical Therapy on April 12, 2012. He indicated to Ms. Pike that he was unloading a pallet of tires that weighed approximately 57 pounds a piece and that when he pulled one of the tires down it bumped him in the stomach. He had no initial pain, but later in the evening he noted some pressure in the bilateral lower abdomen. Ms. Pike was unable to feel a hernia but noted that Petitioner had significant pain. She referred Petitioner to Dr. Annette Shores for further evaluation.

Dr. Shores then evaluated Petitioner on April 12, 2012. Petitioner indicated on April 10, 2012, he was at work when a tire hit him in the lower abdomen. He had been having pain in the left groin since that time. Dr. Shores' assessment was pain in the left groin. She indicated she

did not feel a hernia, but he could have torn the fascia in this area and it would take a while for the hernia to pop out. She recommended an additional CT of the abdomen and pelvis in order to further evaluate Petitioner.

A CT of the abdomen and pelvis was performed on April 18, 2012. The report indicates a finding of a small sliding hiadal hernia in the lower thorax, though the remainder of the findings were otherwise unremarkable. A scrotal ultrasound was also performed on April 18, 2012. The report indicates no evidence of testicular torsion and no evidence of epididymitis or orochitis. It also indicates no obvious hernia formation.

Dr. Shores saw Petitioner again on May 10, 2012. She indicated again that Petitioner was having complaints of left groin pain. Her records do not indicate any right sided pain. She provided Petitioner with pain medication but was uncertain of what further treatment to recommend.

The Petitioner was then seen by Dr. Kenneth Bennett on June 7, 2012. Dr. Bennett diagnosed Petitioner with a left groin strain, and indicated the Petitioner had no hernia present on the right or left side. He recommended physical therapy and pain medication, as well as work restrictions. Dr. Bennett's records do not contain any diagnoses or treatment recommendations for Petitioner's right groin.

The Petitioner was then seen by Dr. Don Pruett on June 20, 2012 for an additional evaluation. His examination revealed that the left ring was dilated with a broad bulge through the ring. The right ring was also dilated, but not nearly as much as the left. Dr. Don Pruett recommended a left inguinal herniorraphy with mesh graft. However, he indicated he would not do anything with the right side at this time as Petitioner had no money and no insurance. He noted the right side was a probable hernia, but indicated the right side "would not be work comp regardless."

The Petitioner's left hernia was surgically repaired by Dr. Chris Pruett on July 23, 2012. The Petitioner was instructed to remain off of work until his next appointment on July 31, 2012.

Dr. Don Pruett saw the Petitioner in post-op on July 31, 2012. Dr. Don Pruett noted that the Petitioner for the first time was complaining of right-sided groin pain. Physical examination revealed a small tender bulge through the right external ring, not previously palpated. Dr. Pruett stated that the Petitioner had developed a right-sided hernia which was "undoubtedly work related" and acquired in the same manner as the one on the left. Dr. Pruett recommended a right-sided inguinal herniorraphy.

Dr. Chris Pruett then performed surgery on Petitioner's right hernia on August 28, 2012 with a mesh graft and Lichtenstein repair. Dr. Chris Pruett acknowledged in the operative report that the right side was found not to be work related. This was discussed with the Petitioner but Dr. Pruett stated he would proceed with the operation at this time to allow Petitioner to return to work sooner.

Dr. Chris Pruett provided a work-release form dated August 29, 2012 that indicated Petitioner should remain off work until next appointment on 9/5/12. He also indicated Petitioner should be at full-duty work on or about 10/2/12.

The Petitioner was then admitted to Crossroads Community Hospital with post-surgical right groin pain on August 29, 2012 and September 1, 2012. The impression was acute right groin pain, post-operative. Petitioner was also admitted to St. Mary's Good Samaritan Hospital on September 3, 2012 with complaints of right inguinal pain following his right-sided hernia surgery. The clinical impression is listed as post operative wound pain. A CT of the abdomen with contrast was performed, as well as a scrotal ultrasound. The ultrasound showed no evidence of bilateral testicular mass and normal flow to both testes.

Dr. Chris Pruett then provided a medical release dated September 5, 2012 whereupon he noted that Petitioner would be at full duty on October 2, 2012, or approximately 5 weeks after his right hernia surgery.

Petitioner was then again admitted to St. Mary's Good Samaritan Hospital on September 8, 2012 and September 9, 2012 with additional right groin pain. Petitioner was transferred to Missouri Baptist Hospital on September 9, 2012 for an additional evaluation by Dr. Chris Pruett. He was noted to have a 2x2 cm collection of fluid in right groin. Petitioner also indicated he had some small drainage of the wound in the shower. Dr. Chris Pruett specifically noted a past surgical history of left hernia repair (work related) and right hernia repair done "under private insurance". Dr. Chris Pruett then performed a procedure on September 9, 2012 to drain the fluid in Petitioner's right groin.

Dr. Chris Pruett also wrote Petitioner's attorney on September 28, 2012 regarding Petitioner's condition. He indicated the left sided hernia condition was found to be work-related. Dr. Chris Pruett specifically stated that "Petitioner's pain was significant and it did not appear it would ever be deemed work related." He also indicated the right-sided hernia operation and post-op drainage of fluid were done free of charge because of Petitioner's condition and his desire to go back to work.

Dr. Chris Pruett also provided a work release for Petitioner dated October 9, 2012 indicating that Petitioner could return to work in a full-duty capacity as of October 5, 2012.

Dr. Russell Cantrell testified on behalf of Respondent by way of deposition. He stated that he specializes in physical medicine and rehabilitation and treats various injuries to the muscular skeletal system and neuromuscular conditions. Dr. Cantrell indicated he saw patients that have groin pain, sometimes related to the hip and sometimes related to the back. However, he stated that this pain would sometimes be related to abdominal wall and hernia diagnoses. Dr. Cantrell is not a surgeon.

Dr. Cantrell testified that reviewed medical records from Petitioner's treatment at St. Mary's Good Samaritan Health Center in Mt. Vernon from April 11, 2012 and April 12, 2012. He stated that these records showed that Petitioner described initial pressure in his lower abdomen and pain that developed in his left inguinal area with coughing or laughing. He also

noted that Petitioner also presented to Dr. Shores for treatment and with complaints of only tenderness in his left groin.

Dr. Cantrell also testified that the records from Dr. Shores did not indicate an actual diagnosis of a hernia on the left or the right side. He further stated that the records from Dr. Shores' treatment of Petitioner did not indicate any treatment regarding any right groin pain of Petitioner as the present symptoms of diagnostic work up were for left groin complaints only.

Dr. Cantrell testified he also reviewed records from an evaluation by Dr. Bennett on June 7, 2012. He indicated that Dr. Bennett diagnosed a left groin strain and that he also examined the right groin and found no indication of a hernia. Dr. Cantrell also noted that Dr. Bennett only recommended treatment with respect to Petitioner's left groin.

Dr. Cantrell testified that he also reviewed the report from Dr. Don Pruett dated June 20, 2012. He stated that at that time, Petitioner presented to Dr. Don Pruett with complaints of discomfort in the left groin without any obvious bulging. Dr. Cantrell noted that Dr. Don Pruett diagnosed a probable left inguinal hernia without any definite hernia on the right.

Dr. Cantrell also stated that Dr. Don Pruett's examination of Petitioner also showed some dilation of the external inguinal ring on the right side but no evidence of a hernia. He noted that Dr. Don Pruett also went on to state that the right side would not be work related regardless. Dr. Cantrell believed that the dilated inguinal ring on the right side was generally larger and more dilated in men than women. He testified that is why men have approximately 25% greater incidents of hernia formation than women. As a result, Dr. Cantrell indicated he would not be surprised to see some dilation of an external inguinal ring on any given man compared to any woman. In absence of any particular symptoms, Dr. Cantrell did not think Petitioner's right dilated ring in this instance had any clinical consequence. He further noted that Dr. Bennett did not note this dilated ring at all during his examination of Petitioner.

Dr. Cantrell testified that he also reviewed a report from Dr. Don Pruett dated July 31, 2012 following Petitioner's left hernia operation. He noted that this record showed the Petitioner presented at that time with right-sided groin complaints and was found to have a definite small tender bulge in the right inguinal external ring that had not previously been palpated. Dr. Cantrell also indicated that Dr. Don Pruett then seemed to have changed his opinion on the work relatedness regarding the findings of the right hernia, which he had previously not considered work related.

Dr. Cantrell noted that the records indicated Petitioner first had presenting complaint of right-sided groin pain on July 31, 2012, or approximately 3 ½ to 4 months after the initial work accident. He testified that given the fact that essentially all of the medical records prior to the evaluation by Dr. Don Pruett on July 31, 2012 reflected symptoms in only the left groin and left lower quadrant, Petitioner's right-sided groin complaints were not causally related to the work injury of April 10, 2012. Dr. Cantrell further stated that the dilated ring noted in Petitioner's right side by Dr. Don Pruett on June 20, 2012 was applicable in his mind to a male versus female disposition because of the increased size in the external inguinal ring in men versus women.

Dr. Cantrell further testified that any additional treatment Petitioner chose to pursue for his right-sided groin pain would not be necessitated by the April 10, 2012 injury. He indicated this would include the subsequent treatment at Crossroads Community Hospital and St. Mary's Good Samaritan Hospital. He believed that while it would be reasonable for Petitioner to have sought follow-up medical care following his right hernia repair, the more reasonable delivery of medical care would have been with Dr. Pruett through an outpatient setting. However, Dr. Cantrell testified that this additional treatment would regardless not be related to the work injury from April 10, 2012.

Dr. Chris Pruett testified on behalf of Petitioner also by deposition. He stated that he is a general laproscopic surgeon who has been practicing for 11 years with his father, Dr. Don Pruett, in St. Louis doing general surgery and laproscopic surgery.

Dr. Chris Pruett stated that the Petitioner was first seen by Dr. Don Pruett on June 20, 2012 for an IME. He acknowledged, however, that the Petitioner was seen by both Dr. Annette Shores and Dr. Kenneth Bennett prior to being seen in his office. He testified that he reviewed these records and that Dr. Shores and Dr. Bennett only provided diagnoses and treatment with respect to Petitioner's left groin.

Dr. Chris Pruett indicated that on June 20, 2012, Dr. Don Pruett diagnosed a left inguinal hernia and a dilated tender ring on the right side, but no definite hernia at that time. Regarding initial symptoms at the time Petitioner presented to Dr. Don Pruett for his initial evaluation, Dr. Chris Pruett stated that Petitioner definitely had symptoms on the left and some pressure across his abdomen. However, Dr. Chris Pruett acknowledged that Petitioner had no specific complaints on the right side other than pressure and that the right side was not symptomatic. He further testified that page 2 of Dr. Don Pruett's IME report from June 20, 2012 indicated that Dr. Don Pruett believed that Petitioner's right side "would not be work comp regardless."

Dr. Chris Pruett testified that he performed the repair of Petitioner's left hernia and this was covered under workers' compensation. He then verified Dr. Don Pruett saw Petitioner in post op following this operation on July 31, 2012. Dr. Chris Pruett confirmed that the report by Dr. Don Pruett's indicated that at "this point" Petitioner complained of pain in the opposite right groin for the first time. He also noted that Dr. Don Pruett now indicated that Petitioner's right-sided hernia was work related. Dr. Chris Pruett testified that "inconsistent" was the "perfect word" to characterize the comparison between Dr. Don Pruett's initial IME opinions regarding causation of the right hernia and those in his July 31, 2012 report.

Dr. Chris Pruett also testified that he performed the right-sided hernia repair on Petitioner on August 28, 2012. He indicated that his operative report from this procedure indicated that the right side was found to not be work related. As such, Dr. Chris Pruett testified that he informed Petitioner he was doing this procedure free of charge. He also stated he did not intend to submit any bills to workers' compensation for this treatment and to his knowledge, no bills were generated.

Dr. Chris Pruett also stated that Petitioner developed an infection in his right groin following surgery and an additional procedure was required, which he again performed free of charge. He noted that Petitioner had recovered from this infection.

When asked whether the dilated ring was causally related to the lifting incident Petitioner sustained at work, Dr. Chris Pruett stated this was a difficult question to answer. He indicated there could be a dilated ring as a baseline and therefore if there was a dilated ring and some sort of injury was sustained, it was more than likely that a hernia would develop in that area. However, Dr. Chris Pruett initially indicated that he was not able to answer whether the dilated ring caused by the incident of April 10, 2012.

However, Dr. Chris Pruett then stated that he believed the most reasonable answer with respect to causation was that the incident that caused the Petitioner's pain and his left inguinal hernia ultimately also caused his right inguinal hernia. He further opined that there are times when a hernia cannot be felt and that this is referred to as an "insipient hernia". He admitted, however, that he believed causation could be argued either way in this instance and that the Petitioner's case was an unusual situation.

Finally, Dr. Chris Pruett also stated he had the opportunity to review the report of Dr. Cantrell in preparation for his deposition. He acknowledged that on page 4 of the copy of Dr. Cantrell's August 24, 2012 report contained in his file there were hand written notes in the right margin by the first paragraph belonging to Dr. Don Pruett. He confirmed these notes read "7/31/2012", "date of injury 4/10/2012", and "too long ago without complaints". Dr. Chris Pruett also agreed in looking at page 4 of the report that there was a portion in the first full paragraph that was underlined which read "the small right inguinal hernia which is undoubtedly work related and inquired in the same manner as the hernia on the left". Dr. Chris Pruett then agreed that the hand written note that he just read into the record was directly to the right of that underlined portion. He indicated it would be a fair characterization that this note pertained to the underlined portion of this paragraph.

Dr. Chris Pruett also examined the hand written note at the bottom of page 4 of the same copy Dr. Cantrell's August 24, 2012 report and acknowledged there was an additional handwritten note by Dr. Don Pruett that read, "agree". He further testified that there was a line that extended up from the word "agree" to an underlined portion of the paragraph directly above it. He confirmed this underlined portion was the end of the sentence that read "it is my opinion that currently the right sided groin complaints reported to Dr. Pruett on the July 31, 2012 are not related to his alleged work injury of April 10, 2012." Dr. Chris Pruett then testified that it would be a fair characterization that the hand written note "agree" was pertaining and referencing this underlined portion of that paragraph.

CONCLUSIONS OF LAW

IS THE PETITIONER'S CURRENT CONDITION OF ILL BEING IS CAUSALLY RELATED TO THE INJURY?

The Petitioner's left hernia condition is not in dispute and has been accepted by Respondent as related to the work injury of April 10, 2012.

However, the Arbitrator finds that the Petitioner's right hernia condition is not causally related to the work injury of April 10, 2012. The medical records and evidence show that Petitioner only experienced left groin pain following the work accident of April 10, 2012. All of the diagnoses from both Dr. Shores and Dr. Bennett regarding Petitioner were related to the left side only, and no diagnoses were made with respect to the right side. Moreover, neither Dr. Shores nor Dr. Bennett provided any treatment recommendations with respect to Petitioner's right groin.

The evidence also shows that Dr. Don Pruett's initial assessment of Petitioner's right hernia condition was that it was not work related. There is also no evidence in the medical records that the Petitioner voiced any complaints of pain in his right groin area until one week following his left hernia surgery. These complaints are noted in Dr. Don Pruett's July 31, 2012 report and he verifies that these complaints were made by Petitioner for the first time on this occasion. This would be approximately 16 weeks following the work accident of April 10, 2012.

The evidence indicates that Dr. Don Pruett felt a dilated ring on Petitioners' right side during his examination on June 20, 2012. Dr. Chris Pruett provided testimony that it was difficult to determine whether that this dilated ring on Petitioner's right side was a result of the work injury of April 10, 2012. In fact, Dr. Chris Pruett initially indicated that he could not answer this question with respect to causation. Dr. Chris Pruett testified further that he had reviewed the report of Dr. Cantrell, as had his father Dr. Don Pruett, and that Dr. Don Pruett had made notes in the margin of the report, indicating he agreed with the statement of Dr. Cantrell, regarding the statement that the right hernia was not work related as the onset of symptoms was to long from the date of injury to the report of symptoms.

Although Dr. Chris Pruett later provided testimony indicating that the Petitioner's right hernia may have been "incipient" and thereby not detectable until well after the work accident, the Arbitrator finds that this is insufficient to explain the delay in the onset of Petitioner's right groin symptoms. The Arbitrator therefore finds the opinions of Dr. Cantrell to be more persuasive and consistent with the medical records submitted into evidence.

Dr. Cantrell testified that this dilated inguinal ring on the right side was generally larger and more dilated in men than women. He indicted this is why men have approximately 25% greater incidents of hernia formation than women. Therefore, in absence of any particular symptoms, Dr. Cantrell did not think Petitioner's right dilated ring in this instance had any clinical consequence. He further testified that Dr. Bennett did not note a dilated right inguinal ring in Petitioner during his examination. Dr. Bennett's examination of Petitioner was approximately 2 weeks before that of Dr. Don Pruett.

Dr. Cantrell concluded that as essentially all of the medical records prior to the evaluation by Dr. Don Pruett on July 31, 2012 reflected symptoms in only the left groin and left lower quadrant, Petitioner's right-sided groin complaints were not causally related to the work injury of

April 10, 2012. The Arbitrator finds that this conclusion is logical and consistent with the medical records submitted into evidence. Moreover, the Arbitrator notes that Dr. Chris Pruett provided testimony that his father, Dr. Don Pruett made handwritten annotations on Dr. Cantrell's August 24, 2012 report that are suggestive that he was in agreement with Dr. Cantrell's opinions.

The Arbitrator finds that Dr. Don Pruett's annotations on Dr. Cantrell's report provide additional support to his original conclusion in his evaluation of Petitioner on June 20, 2012 that the right hernia condition was not related to the accident of April 10, 2012. This, combined with the opinions of Dr. Cantrell is more persuasive than the opinions of Dr. Chris Pruett.

For the foregoing reasons, the Arbitrator therefore finds that Petitioner's current condition of ill-being with respect to his right hernia is not medically causally related to the work accident of April 10, 2012.

WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER WERE REASONABLE AND NECESSARY, AND HAS THE RESPONDENT PAID ALL APPROPRIATE CHARGES FOR REAONSABLE AND NECESSARY MEDICAL SERVICES?

As the Respondent has not disputed the Petitioner's left hernia condition and accepted the same, the Arbitrator finds that the treatment Petitioner received prior to his right hernia operation on August 28, 2012 was reasonable and necessary and related to the work injury of April 10, 2012. Therefore, Respondent is obligated to provide payment for the medical expenses from Petitioner's treatment prior to August 28, 2012 according to the Illinois Fee Schedule to the extent it has not already done so.

With respect to the medical treatment Petitioner received for his right hernia condition, as the Arbitrator has found that this condition is not medically causally related to the work accident of April 10, 2012, Respondent is not responsible for payment of any medical bills after August 28, 2012.

The Arbitrator further finds that the Respondent shall be entitled to a credit of $8,020.99 under Section 8(j) of the Act for medical benefits already provided to Petitioner.

WHAT TEMPORARY BENEFITS ARE IN DISPUTE AND WHETHER RESPONDENT IS DUE ANY CREDIT?

The Petitioner claims temporary total disability benefits from April 11, 2012 through April 19, 2012, July 23, 2012 through July 30, 2012 and August 27, 2012 through October 12, 2012. Petitioner has provided testimony that for the remaining dates between his date of injury and his release from care by Dr. Chris Pruett, he was able to work light duty for Respondent and was provided his regular wages.

As the Respondent has not disputed the Petitioner's left hernia condition and accepted the same, the Arbitrator finds that Petitioner is entitled to TTD benefits from April 11, 2012 through

April 19, 2012, as well as July 23, 2012 through July 30, 2012. These benefits shall be paid by Respondent at Petitioner's TTD rate of $220.00.

However, since the Arbitrator finds that the Petitioner's right hernia condition is not medically causally related to the work accident of April 10, 2012, no TTD benefits are awarded from August 27, 2012 through Petitioner's full duty release by Dr. Chris Pruett.

To fully address the TTD periods owed to Petitioner, the evidence shows that Respondent has already paid Petitioner $845.89 in TTD benefits, and has also provided an advancement of benefits on a disputed basis of $1,760.00 for which Respondent would be entitled to a credit.

WHAT IS THE NATURE AND EXTENT OF PETITIONER'S INJURY?

The Arbitrator finds that Petitioner suffered a hernia in his left groin as a result of the work accident of April 10, 2012. The evidence shows that Petitioner required some conservative treatment and ultimately required surgery that was performed by Dr. Chris Pruett on July 23, 2012. However, Petitioner was able to work light duty during most of the treatment for this condition, and was only completely off of work for approximately two weeks. The evidence also shows that Petitioner fully recovered from his left hernia approximately 4 weeks after the surgery was performed.

Dr. Chris Pruett gave Petitioner a full duty release with respect to his left hernia. Petitioner provided testimony that he has some difficulty in lifting objects following his recovery. However, no additional evidence was presented indicating that any other aspect of Petitioner's daily life was adversely affected by the work injury. Moreover, Petitioner testified that he had at one point temporarily returned to work and was in the process of applying for additional employment. No evidence indicates that Petitioner is in any way restricted from finding employment due to his work injury.

The Arbitrator finds in light of the evidence presented at trial concerning the nature and extent of Petitioner's left groin injury, Petitioner is awarded permanent partial disability benefits in the amount of 3% of the man as a whole measured at the 500-week level. This totals 15 weeks of compensation. Respondent shall therefore provide Petitioner with 15 weeks of compensation payable at his PPD rate of $220.00, or a total of $2,750.00.

However, as the evidence shows that Respondent has provided an advancement of benefits to Petitioner on a disputed basis of $1,760.00, Respondent would be entitled to a credit against any permanent partial disability awarded for any amount of the advancement remaining if not applied to other benefits awarded herein.

Given that the Arbitrator has found that Petitioner's right hernia condition is not medically causally related to the work accident of April 10, 2012, Petitioner is not entitled to any permanent partial disability for his right hernia condition.

ORDER OF THE ARBITRATOR

The Respondent shall provide the Petitioner with TTD benefits from April 11, 2012 through April 19, 2012, as well as TTD benefits from July 23, 2012 through July 30, 2012, payable at a rate of $220.00. Respondent shall also provide Petitioner with PPD benefits with respect to the left hernia. Respondent is allowed a credit for TTD benefits previously paid in the amount of $845.89, as well as an additional credit for $1,760.00 in other benefits previously provided to Petitioner.

The Respondent shall also provide the Petitioner with the medical benefits related to the left hernia condition for treatment received prior to August 28, 2012 to the extent that it has not already done so. Respondent shall provide these benefits in accordance with the Illinois Fee Schedule.

The Respondent shall also provide the Petitioner with PPD benefits in the amount of 3% of the man as a whole measured at the 500-week level as compensation for Petitioner's left hernia condition. Petitioner is therefore entitled to 15 weeks of compensation measured at a PPD rate of $220.00, totaling $2,750.00. Again, however, Respondent is allowed an additional credit for the $1,760.00 in other benefits previously provided to Petitioner to the extent not already awarded herein.

No benefits are awarded with respect to the Petitioner's right hernia condition.

Deborah L. Simpson
Arbitrator Deborah Simpson

March 17, 2013
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Derrick Dawson,

Petitioner,

14IWCC0254

vs.

NO: 12 WC 29594

CR Coating & Logistics Management,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses-including prospective medical care, temporary total disability, and penalties and attorney fees and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

- Petitioner was a 33 year old employee of Respondent, who described his job as 3rd shift (10:30pm-7:00am) wash line, team lead. Petitioner is about 5'10 tall and weighed 185 pounds on the date of accident; currently he weighs approximately 208 pounds. Petitioner testified that prior to the accident he had no problems with his neck or low back, and had no scars that required him to seek medical attention. Since the date of accident, Petitioner had not been involved in any other accidents or injuries regarding his neck, head, low back, legs, or any other parts of his body that were alleged injured here. Petitioner testified that prior to the incident he had no medical condition or diseases that in any way affected his health.

- On July 6, 2012, Petitioner testified he was employed with Respondent and had been for 8-9 months. Petitioner stated that he had started working for Respondent as a wash operator, washing tanks. Petitioner testified that the job involved getting tanks with a forklift, putting them inside a machine, and hooking up a washer to wash them. Petitioner stated he then took them out, dried them with an air hose, vacuumed them out and put the tanks back in the stationary area. Petitioner testified that the tanks are used for diesel and hydraulic oil; the tanks went into big machines. Petitioner stated that some of the tanks were 800-900 pounds or more. Petitioner testified that he did that for about 3 months when the Caterpillar supervisor spoke to Mr. Jim and Mr. Bob and told them that he was doing a good job because he was doubling the tanks done in that area. Petitioner testified that after those three months, he was moved to team lead. Respondent talked to him about it and Petitioner testified that as team lead he was over people and the machines. Petitioner stated that he had to make sure that the machines were running and that everyone was doing their jobs. Petitioner stated that he knew practically everything about the machines and how to run them. Petitioner testified at the time of the accident he had 10-12 people working under him as team lead. Petitioner testified his duties as team lead were putting in tickets for machines, getting parts, going to the crib to get things needed to work with. Petitioner stated he had to make sure everyone was doing their job and make sure everyone was using safety precautions and staying safe. Petitioner testified that he was responsible for production. He stated that they had so many parts that they had to get out every night on each shift. Petitioner stated at the end of the week they had to add up the number of parts washed and that determined production the 3rd shift put out for the week. Petitioner stated that he had to turn those numbers in to the supervisors each week. When he turned in the numbers the supervisors would comment on the productivity and he stated they would just tell him they were doing a good job on 3rd shift and they were pushing out a lot of parts that needed to be pushed out. Petitioner stated that Caterpillar supervisors that walked around would also say they were doing a good job on 3rd shift. Petitioner stated that the Caterpillar supervisors walked around the floor every night. Petitioner stated on the south end he (they) always had the floor clean. Petitioner stated they would come in at 10:30pm and there would be 40 tubs on the floor and before Petitioner left in the morning, those tubs would be all done.

- Petitioner testified that the facility was owned by Caterpillar but that he worked there for Respondent (C.R. Coating) to wash all the parts and paint. Petitioner's shift was 10:30pm to 7:00am. Petitioner testified in the time he worked as team lead he always worked the 3rd shift; however, sometimes he had to stay over onto 1st shift when people did not show up for work or they needed extra help. Petitioner stated overtime was mandatory most of the time for him. Petitioner testified that he worked a lot of hours. Petitioner stated that he would sometimes request time off but they were unable to let him off because they did not have enough people.

- On the date of accident, July 6, 2012, Petitioner testified he was working in his capacity as team lead. Petitioner stated they were short handed as there was a labor situation at the facility. Petitioner stated they had gotten rid of a lot of people; there was a strike going on at Caterpillar. Petitioner did not know if Caterpillar or Respondent owned the machine, he just knew they operated it and the mechanics that fixed the machines were employees

of Caterpillar. The Caterpillar employees were required to fix the machines then during the strike. Petitioner stated they had contingency workers that were brought in from different facilities to repair the machines. Petitioner stated that those people did not know a lot about the machines as they would come and ask them (Petitioner) for information about the machines. Petitioner stated that if something happened to the machines, they would ask what was wrong, and different questions about the machines. Petitioner indicated that the strike had been going on for weeks. Petitioner stated on the day of the accident he came in at 10:00 so he could get everything ready, go to his locker, get gloves for all the workers, check e-mails, see if any posts were there that he needed. Petitioner stated that he gave safety speeches before they started work. Petitioner stated that he worked seven days a week and normally came in at that time to get everything ready. Petitioner stated on that day as he was coming in to work he had to pass by Mega which was the machine he was injured on. He stated he went by the machine and there was a mechanic there and the 2nd shift lead came to him and told him that Mega had been down all day and that they had been working on it. Petitioner stated he told the 2nd shift lead that there were a lot of tubs on the floor (50-60) as the machine had been down for two shifts. Petitioner stated the Mega machine is the biggest machine that they have at that end and it washed the biggest parts they have. Some of those parts are 400-500 pounds or more and you can only fit one of the bodies in the basket; he again noted the parts are heavy and the mega washes the parts. Petitioner indicated it was unusual for that many tubs to be on the floor when he came to work; but they were there because the machine was down. Petitioner indicated if there is no problem his shift would do 15-20 tubs in a shift. When the 2nd shift lead advised Petitioner about the machine, Petitioner stated he continued to go to clock in and then he met everyone upstairs as they normally did. Petitioner stated that he went through the safety meeting and after the meeting dismissed everyone. The meeting is to tell everyone of the parts on the floor and that they were to try to push the parts out and have the floor clean before they left. He stated he read off a report about if there were injuries. He stated the building was always very hot and he told them to drink plenty of fluids. Petitioner indicated that after the meeting he met with Brian, the person who ran the Mega, and they went back to the machine but the maintenance person was gone. The maintenance worker was one of the contingency workers during the strike. Petitioner stated he then put a ticket into the computer on the machine letting them know what was wrong with the machine and that it needed maintenance/repair. Petitioner stated that he requested that about 10-15 minutes after the meeting; around 10:40pm. Petitioner indicated there had already been tickets put in about the machine as the prior shift mechanic had been working on trying to repair it. That mechanic left at the end of 2nd shift so Petitioner had to put in another ticket for repair. Petitioner indicated that the mechanic did not respond to that ticket for repairs. Petitioner stated they waited a while for another mechanic who never showed up after waiting 25-30 minutes. Petitioner noted that the machine was still down. Petitioner stated that the tubs that were there to be washed were from different areas of the building. After being washed the parts are sent inside to get billed. Petitioner was not sure what Caterpillar was building with the parts, he just knew he washed the tanks and the tanks were then sent to the warehouses and different places. Petitioner indicated if the parts were not washed in the Mega machine; that delayed the other destinations in the plant where the parts are used to fabricate and make something. Petitioner indicated there were 50-60 tubs backed

up at that time. Petitioner stated that he looked at the machine and saw what the problem was, as it broke down all the time. Petitioner testified that the same thing happened several times with that machine. Petitioner stated he was looking to see the problem and saw there was a basket stuck in the washer. Petitioner stated that the door on the washer cannot close unless the basket is all the way in. Petitioner stated that he knew what to do to fix the machine; he stated he had done it before. Petitioner stated you can walk inside the machine, it is a real tight fit, but big enough for a person to get in.

- Petitioner viewed RX 2 (a photo) and stated it was the backside of the Mega where the tubs come out of the machine down the roller on the back. It was noted that there is a door with like a window on it and the door leads inside the machine. Petitioner indicated that inside the machine are the mechanisms for washing. Petitioner viewed RX 6 and stated that it was the inside of the machine. Petitioner noted the shovel and clamps. He indicated that the basket inside was full of parts on a flat surface inside the wash tub area where the actual washing takes place. Petitioner indicated the basket was visible because it was not all the way inside the wash area, it was stuck. Petitioner stated when it is stuck you can give it a push to get it in and the door will then close with it sliding down and the machine will then operate.

- Petitioner testified that the reason the Mega machine was not operating that day was because the basket was stuck. Petitioner indicated the substitute mechanics are not familiar with the machine and did not attempt to address the problem by pushing the stuck basket into the proper position. Petitioner stated that after looking at the situation, with 50-60 tubs holding and no mechanics coming, he got with Brian and they got a golf cart, went to the other side of the building, got a bar and returned to the machine. Petitioner stated when they got back he hit the safety shut down button which shuts down certain parts of the machine. Petitioner stated after that he went around to the back of the machine (indicating on the photo RX 2) and told Brian to stay out as it was a safety zone and not safe for him there. Petitioner again indicated that he had gone in several times before to fix that situation because it happened all the time with that machine. Petitioner testified he went inside the machine and he had the bar to push the basket on the lift. Petitioner stated he gave it a push and when he did, it freed the basket and the door came in and the shuttle plunged off to the left (he indicated it on the photo). The rails were noted where the shuttle slides on. Petitioner indicated the shuttle was not in the same position then as in the photo (RX 6). Petitioner testified that the shuttle had been shifted all the way to the right (apparently going out of the pictured area). He agreed there are 4 platforms bound tightly to each other so they move the whole shuttle all together. It was again noted Petitioner was freeing up the basket with a metal bar and when he pushed it the door closed down and the shuttle shot off to the left. Petitioner stated that he was between the machine arm on the right and left; Petitioner indicated with an 'X' on the photo where he had been standing; He was between the two arms. The general area was circled on the photo. Petitioner indicated (RX 6) the shuttle moved into the picture area noted. Petitioner testified when the shuttle moved it shot off so fast that it struck him on the right side of his head (above the eyebrow). He indicated he would have been struck by the corner of the shuttle (indicated on the photo). Petitioner indicated when it struck him it twisted Petitioner around to the left and his left side struck the metal area.

Petitioner just knew that something (pointed at in the indicated photo) hit the side of his face and cut him (the Arbitrator made a square around the area). Petitioner indicated when he twisted he also hit his back on the right side and his right leg on the brace that was sticking out. Petitioner stated when it twisted him around he saw blood and he immediately put pressure on his face where he was bleeding. Petitioner indicated he put up both hands to his face as he was hit in 2 spots and the back of his head.

- Petitioner testified that after that, he immediately got out of the machine and told Brian (the Mega operator) to take Petitioner to the ER inside the building. Petitioner stated when they got there, they were closed; no one was there, so they immediately went to the security office. Petitioner stated when they got there they could not touch Petitioner so they immediately called 911 for an ambulance. Petitioner testified the ambulance took him to Provena St. Joseph Hospital.

The Commission finds the evidence and testimony is clear that Petitioner entered a restricted area when he went into the Mega to clear a basket jam. Petitioner was an operator and not qualified or authorized to perform that task whether he had previously aided maintenance people or not. Petitioner worked for Respondent and the Mega was owned and maintained by Caterpillar. Petitioner's job duties were to oversee the washers on the machine and duties such as maintenance were clearly outside of his responsibilities. There was a lockout/tag out procedure to be followed by Caterpillar maintenance people. Petitioner obviously did not have the lock equipment or knowledge to properly bring the Mega to 'O' energy to allow for safe repair. Petitioner even entered the Mega via the belt area rather than through the doorway which would have set off an alarm, which he was clearly aware and further showed he was beyond his scope of his job duties. Petitioner was clearly at work when the accident occurred but he was not acting within the scope of his employment as he was employed as a lead on the 3rd shift wash for Respondent and not as a maintenance worker for Caterpillar or Respondent. While Petitioner apparently wanted to get the machine operational to move the wash production that was backed up, he did not want to wait for maintenance to remedy the problem. Petitioner tried to fix it himself which was well beyond his expertise and his job duties. Petitioner's testimony is unrebutted as to being injured while working for Respondent at the Caterpillar facility; however Petitioner took himself out of the scope of his employment by performing the job of an employee (maintenance) of another employer (Caterpillar) well beyond his expertise and the proscribed job duties of his employment with Respondent. Accordingly, Petitioner failed to meet the burden of proving accident that arose out of and in the course of his employment and thereby also failed to prove any causal relationship between his injuries and condition of ill-being. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence, and, herein, affirms and adopts the Arbitrator's finding that Petitioner failed to prove accident that arose out of and in the course of employment, and further affirms and adopts the Arbitrator's finding that Petitioner failed to prove a causal connection.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 3, 2013 is hereby affirmed and adopted.

14IWCC0254

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $-0-. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 7 2014
o-1/16/14
DLG/jsf
45

David L. Gore

Michael J. Brennan

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DAWSON, DERRICK
Employee/Petitioner

Case# 12WC029594

14IWCC0254

CR COATINGS & LOGISTICS
Employer/Respondent

On 6/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2221 VRDOLYAK LAW GROUP LLC
MICHAEL P CASEY
741 N DEARBORN ST 3RD FL
CHICAGO, IL 60610

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
KIM EMERSON
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 14IWCC0254

DERRICK DAWSON
Employee/Petitioner

v.

CR COATINGS & LOGISTICS
Employer/Respondent

Case # 12 WC 29594

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **George Andros**, Arbitrator of the Commission, in the city of **New Lenox**, on **April 11, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☐ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

14IWCC0254

FINDINGS

On **7/6/12**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$33,698.17**; the average weekly wage was **$648.04**.

On the date of accident, Petitioner was **33** years of age, ***single*** with **3** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$3,110.56** for other benefits, for a total credit of **$3,110.56**.

Respondent is entitled to a credit of **$0.00** under Section 8(j) of the Act.

ORDER

No benefits are awarded as the accidental injuries sustained by petitioner on July 6, 2012 are not arising nor in the course of his employment with Respondent in the case at bar.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

01 George J Andros
Signature of Arbitrator

May 30,2013
Date

JUN -3 2013

FINDINGS OF FACT 12 WC 29594

On July 6, 2012, petitioner was employed by CR Coating & Logistics as the Wash Line Team Lead on the third shift. (T. 10) The third shift operated from 10:30 p.m. to 7:00 a.m. (T. 14) Petitioner testified that his job responsibilities included putting in tickets for machines, getting parts and supplies, making sure those under him were performing their jobs correctly and safely, and ensuring production. (T. 10-12) Petitioner admitted on cross examination that part of his job duties as Team Lead were to report all equipment malfunctions to the supervisor on duty and complete a maintenance request ticket. (T. 70 & RX7) Petitioner further testified that the wash line operators were required to process/wash the metal parts in any tubs left by their assigned machines during their shift.

Mr. Robert Sieffert, testified on behalf of the respondent. He testified that he had worked for CR Coatings and Logistics at the Caterpillar facility for four years and had worked as the general manager for two years. (T. 122-123) As general manager, he was the chief operating officer and was responsible for the entire operation. (T. 123)

Mr. Sieffert testified that, as Wash Line Team Lead, petitioner was responsible for all of the wash operators on his shift. This included getting them set up, making sure they were washing the correct pieces, making sure that they were washing enough pieces, and making sure that they worked safely. (T. 125) Mr. Sieffert testified that Respondent's Exhibit 7, was a detailed job description for a Wash Line Team Lead that was prepared by CR Coatings and Logistics in the regular course of business. He testified that petitioner was provided with a copy of this job description at the time of his promotion. (T. 125-126)

Mr. Sieffert testified that CR Coatings was an independent contractor working for Caterpillar. He continued to explain that they were responsible for painting all of the components that were manufactured in the facility and washing some of the parts prior to assembly. (T. 123) Mr. Sieffert testified that Caterpillar owned the machines operated by CR Coatings to paint and wash the components. He testified that Caterpillar was responsible for repairing these machines in the event of a breakdown. (T. 124) Mr. Sieffert testified that CR Coatings and Logistics did not employ any maintenance staff to repair the machines that they operated for Caterpillar. Rather, Caterpillar was responsible for hiring all maintenance employees to repair the machines. (T. 124)

On cross examination, petitioner testified that he received a copy of the Summary of Joliet Facility Safety Rules and Regulations during his orientation and was familiar with same. (T. 73)

Mr. Sieffert confirmed that petitioner was provided with a copy of the Summary of Joliet Facility Safety Rules and Regulations during his orientation with CR Coatings and Logistics. (T. 127) Petitioner admitted that paragraph 13 of these rules provided that employees were to stay out of any hazardous or restricted areas unless they were assigned to it. (T. 74 & RX1) Mr. Sieffert testified that, if an unauthorized employee was found to enter a restricted area, it was standard procedure to terminate that employee. (T. 130-131) Mr. Sieffert confirmed that the internal areas of the Mega Wash machine were considered a restricted area. (T. 131) Specifically, the internal areas of Mega were restricted to maintenance personnel only. (T. 131) Again, Mr. Sieffert confirmed that CR Coatings did not employee any maintenance personnel. (T. 131)

Petitioner further admitted that paragraph 23 of these rules required that lockout/tagout procedure must be followed when a machine was being repaired or cleaned. (T. 74) Petitioner testified that he was familiar with the lockout and tagout procedures that were preformed by the maintenance staff. (T. 75) He indicated that only mechanics were issued personal locks to lockout a machine and admitted that he did not have a personal lock to lockout the machines. (T. 76-77) Petitioner testified that the lockout/tagout procedure was posted on the front of the electronic control box to the left of the entry doorway to Mega. (T. 86, RX4 & RX5)

Petitioner testified that on July 6, 2012, the Caterpillar employees had been on strike for weeks. He testified that Caterpillar employed the mechanics that fixed the wash machines. He continued to testify that, during the strike, the contingency workers brought in to work on the machines had little knowledge of the machines and asked the other workers about the malfunctions and repairs. (T. 17-19) On cross examination, petitioner admitted that he was not trained in maintenance repairs on Mega by CR Coatings or Caterpillar. (T. 84-86)

Petitioner testified that on July 6, 2012, he arrived at the facility at 10:00 p.m. for the third shift. He testified that as he entered the facility he passed by Mega and noted that a mechanic was there with the second shift lead. He testified that the second shift team lead told him that Mega had been down all day. (T. 20) Thereafter, petitioner proceeded to clock in and present the safety meet for the third shift employees. (T. 22) After the meeting was completed, petitioner returned to Mega on the floor. When he arrived, the maintenance worker was no longer at the machine. (T. 24) Petitioner stated that the maintenance worker from the second shift had left Mega because they had to change shifts as well. (T. 26) Petitioner then put in a maintenance ticket for the Mega wash machine for the third shift at approximately 10:40 p.m. (T. 25) Petitioner testified that he waited 25 minutes or so for maintenance to respond to the new ticket. (T. 27)

Mr. Sieffert testified that the response time for a maintenance request depended upon the demands on the maintenance department. Some requests were answered very promptly and some could take an hour or more,

depending upon the workload and priorities. (T. 143) Mr. Sieffert continued to state that if a maintenance request was taking longer than normal, petitioner should have phoned the maintenance department directly or a supervisor who could exert some influence on the maintenance department. (T. 143) Mr. Sieffert testified that while awaiting maintenance repairs, CR Coatings employees were expected to perform general housekeeping tasks and make their supervisor aware of the delay. (T. 144) He continued to state that there was no penalty for decreased production when a machine was down. (T. 143)

Instead of following the standard protocol, petitioner testified that he looked at the machine himself to determine the problem and saw that a basket was stuck in a door of the machine, which prevented the door from closing and the machine from running. (T. 29-30) Mr. Sieffert testified that the stuck basket described by petitioner was not a simple issue and was actually a difficult thing to repair. (T. 149)

Petitioner testified that, upon identifying the problem, he went to the opposite end of the facility to obtain a metal pry bar and came back to the machine to attempt to fix it. (T. 36) He testified that he hit the safety shut off button before entering the machine, but admitted that this button only shut down certain parts of the machine and not the whole machine. (T. 36) He then admitted that he told his co-worker to stay outside of the machine because it was a known safety zone and it was not safe. (T. 37)

Petitioner testified that the baskets had become stuck on this machine on multiple occasions and he had assisted in fixing it previously. (T. 37) On cross examination, petitioner admitted that none of the Caterpillar supervisors or CR Coatings supervisors had knowledge of his entering Mega to assist with repairs prior to July 6, 2012. (T. 101) Mr. Sieffert confirmed that, prior to July 6, 2012, he was unaware that CR Coatings employees were entering the restricted areas of Mega. (T. 132)

On cross examination, petitioner testified that Mega was an enclosed machine with all of the moving parts being enclosed within a metal and plexiglas structure. (T. 78) He admitted that the doorway into Mega was marked as restricted access with the sign stating that only maintenance personnel were to enter Mega, as depicted in Respondent's Exhibit 2. (T. 78-79) Petitioner continued to testify that this doorway was supposed to be locked but had been left unlocked on July 6, 2012. (T. 79-80) Petitioner admitted that when the door was locked, he did not have a key to unlock the padlock. (T. 80) *Even though the door into Mega had been left unlocked on the date in question, petitioner still entered the machine by hopping through the opening in which the conveyor belt exits the machine, as depicted in Respondent's Exhibit 2. (T. 86-87) He testified that he did not use the unlocked doorway to avoid the alarm from sounding throughout the plant. (T. 87) (emphasis added by Arbitrator)*

Upon entering Mega, petitioner moved between the first and second arms on the left side of the machine (T. 43) and stepped inside of the lower I-beam connecting these arms (T. 91) when he began to work on the machine. This area was marked by the Arbitrator with a circle on Respondent's Exhibit 2. He then gave the basket a push with the metal bar, freeing the basket. (T. 38) Once freed, the basket entered the wash area and the door to the wash area closed. (T. 38) After the basket was freed, the shuttle was released and moved to the left of the machine or towards the back of the picture in Respondent's Exhibit 6. (T. 38) Petitioner testified that when the shuttle moved, the left upper corner of the shuttle hit him on the right side of the head above his eyebrow twisting his body to the left where he hit the left side of his head on the second arm of the machine. (T. 44-46) Petitioner testified that his right leg and back were also hit by the brace on the lower part of the shuttle. (T. 47)

Petitioner testified that he saw blood and immediately grabbed both sides of his head and exited the machine. (T. 47-48) Then he asked his coworker to take him to the building ER. Upon finding the building ER closed, Petitioner then proceeded to the security office where 911 was call and an ambulance was sent. (T. 48) Petitioner testified that he was taken to Provena St. Joseph Hospital by ambulance. (T. 48) He reported that he was hit on the right side of his head by a moving machine and then hit the left side of his head. He denied loss of consciousness, dizziness, or vision changes. He did complain of a mild headache. He was noted to have lacerations to his right temple, left cheek, and top of his right thigh. (PX1 p. 17-18 & 26) Petitioner specifically denied any neck pain. (PX1 p. 28)

On examination, he had no midline or paraspinal tenderness in his neck or back. (PX1 p. 20 & 29) The lacerations on the right and left sides of his face and his right thigh were cleaned and sutured. (PX1 p. 29) Petitioner was discharged home with prescriptions for Keflex and Norco. He was instructed to keep his wounds clean, dry and covered. He was given a note to be off work July 7 and July 8, 2012 and was instructed to follow-up with his primary care physician or Dr. Shahid Masood. (PX1 p. 21)

Petitioner testified that he returned to the Emergency Room at Provena Saint Joseph Medical Center on July 10, 2012 for evaluation of very bad headaches and neck pain. (T. 50) This testimony is not supported by the medical records. Upon presentation to the emergency room on July 10, 2012, petitioner indicated that he was presenting for a wound check and complaints of headaches only. (PX1 p. 33) In fact, during this visit, petitioner denied any neck or back pain or injury. (PX1 p. 46) On examination, his lacerations were noted to be healing well. He had full range of motion with no pain or tenderness in his neck. He had no focal neurologic deficits. He had normal motor function and normal gait. (PX1 p. 46-47) Petitioner was provided a new prescription for Norco and was discharged home. He was not taken off work. (PX1 p. 47)

Petitioner testified that he was truthful and honest with the nurses and physicians in the emergency room during each visit. (T. 92) He confirmed that he reported all of his complaints and symptoms to his treaters at each of his presentations. (T. 92)

Mr. Sieffert testified that he contacted petitioner by phone on July 11, 2012 to advise him that he was being terminated for violation of a serious safety rule. (T. 141) Most notably, Mr. Sieffert continued to advise petitioner that CR Coatings would like to assist him in finding employment with one of their sister companies off of the Caterpillar site. (T. 141-142) Petitioner confirmed the contents of this telephone conversation and admitted that he did not follow-up on the offer to assist with other employment. (T. 98) Mr. Sieffert advised that after this conversation petitioner stopped returning their calls and stopped communicating with them. (T. 142) Instead, petitioner contacted an attorney and signed his application for adjustment of claim on July 13, 2012. (T. 99)

Petitioner next presented to Dr. Shahid Masood on July 16, 2012. (T. 99) During this visit, ten days after the alleged accident, petitioner reported his first complaints of neck and back pain. He complained of severe pain radiating from his neck to his right upper extremity. (PX2 p. 11) Contrary to the emergency room records, petitioner advised Dr. Masood that he had presented to the emergency room twice for this pain. He also complained of back pain radiating from half way down his back to his hips. (PX2 p. 11) He was given prescriptions for OxyContin and Ibuprofen and was referred for a CT of his C-spine.

Petitioner next presented to Dr. Mark Cohen of Physician Plus, Ltd. (PX3) These records include an initial work status note dated July 18, 2012; however, there are no corresponding office notes for this date of service included therewith. (PX3) The first substantial medical record from Dr. Cohen is a physical therapy progress evaluation dated July 24, 2013. This was noted to be petitioner's initial physical therapy session. He denied any changes in his condition. (PX3) Petitioner completed 32 physical therapy sessions with Dr. Cohen from July 24 to October 16, 2012. (PX3) Upon referral from Dr. Cohen, petitioner underwent MRIs of his lumbar and cervical spine at SKAN National Radiology Services on July 25, 2012. The lumbar MRI revealed a small shallow posterior disc protrusion with a central annular tear at L5-S1. (PX3 p. 66-67) The cervical MRI revealed multilevel chronic degenerative disease with no evidence of cord compression. (PX3 p. 68-69)

On August 31, 2012, petitioner presented to Dr. Scott Glaser of Pain Specialists of Greater Chicago. Petitioner reported an injury on July 6, 2012 where he was hit by a sliding shuttle in the head, arm and back. (PX6 p. 19) Petitioner then claimed that the day after the accident he began to note bilateral, left greater than right, lower back pain and numbness going into the left leg, as well as, neck pain associated with headaches and left upper extremity pain and numbness. (PX6 p. 19) However, these allegations of neck and back pain beginning the day after the incident are inconsistent with the histories provided and symptoms reported by the petitioner in the emergency room on July 10, 2012. Based upon the history provided by petitioner and his clinical examination, Dr. Glaser assessed petitioner with headache, cervical, thoracic, and lumbar facet syndrome with myelopathy, cervical radiculopathy, and lumbar radiculopathy.

Petitioner presented to Dr. Scott Lipson on September 4, 2012 for evaluation and an EMG to evaluate left arm and leg pain, numbness and tingling. (PX5 p. 9) Inconsistent with his prior medical records and his trial testimony, petitioner advised Dr. Lipson that he was dazed after the impacts of his accident and the next thing that he remembered after the impact was being in the ambulance. (PX5 p. 5; T. 47-48) Petitioner reported symptoms of low back pain, neck pain, headaches, dizziness and slowed cognitive processing developed after July 6, 2012. (PX5 p. 9) However, other than the headaches, none of these symptoms were reported in either of his emergency room visits. This EMG was read to reveal evidence of left-sided cervical radiculopathy affecting the C6 nerve root and Left lumbosacral radiculopathy affecting the L5 nerve root. Based upon his examination and petitioner's less than accurate history, Dr. Lipson diagnosed petitioner with postconcussion syndrome, chronic post-traumatic headache, cervicalgia, lumbago and disturbance of skin sensation. (PX5 p. 7)

Dr. Kevin Walsh, a orthopedic surgeon, performed a section 12 exam on September 10, 2012. (T. 100) On examination, petitioner was noted to have decreased cervical range of motion. However, he had no palpable trigger points or muscle spasms and there was no tenderness in the spinous processes. His motor strength was 5/5 throughout the upper extremities and his sensation was intact. Examination of his lumbar spine revealed tenderness to simple touching of the skin. He could heel and toe walk with pain reported. Motor strength in his lower extremities was 5/5 and he was neurologically intact.

Dr. Walsh opined that petitioner suffered a head contusion with lacerations involving his head and right thigh with subsequent development of pain in his neck and back. Dr. Walsh indicated that petitioner may have suffered a cervical or lumbar strain with the incident described. However, he opined that it was not at all likely that he suffered an acute herniated disk or annular tear with the described injury. Dr. Walsh noted that petitioner's imaging studies revealed degenerative changes. However, he opined that those degenerative changes were not caused or aggravated by the described incident. Dr. Walsh noted that petitioner did not have specific cervical or lumbar radiculopathies on physical examination. Dr. Walsh continued to opine that petitioner's subjective complaints were out of proportion to his objective abnormalities, specifically noting that his physical examination revealed behaviors consistent with symptom magnification.

Dr. Walsh opined that petitioner's reported symptoms in September 2012 were not causally related to the July 6, 2012 incident. With respect to the incident in question, Dr. Walsh opined that petitioner required no work restrictions and had reached maximum medical improvement within weeks of the incident.

Petitioner testified that he continued to treat with Dr. Glaser for his cervical and lumbar complaints as of the time of trial. (T. 57) During the course of his treatment petitioner had presented for two injections. On January 29, 2013, Dr. Glaser performed a cervical intralaminar epidural steroid injection at C6-7. (PX6 p. 44) Petitioner returned for a transforaminal epidural steroid injection on the left at L4-5 and L5-S1 on February 12, 2013. (PX6 p. 42) During his February 26, 2013 office visit with Dr. Glaser, petitioner reported that his pain had decreased by 50% status post injections. (PX6 p, 37) Petitioner testified that Dr. Glaser was recommending additional injections for his lumbar spine. (T. 55) Petitioner testified that he was continued off work at the time of the hearing by Dr. Masood. (T. 57, PX9)

II. CONCLUSIONS OF LAW

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

For an employee's workplace injury to be compensable under the Illinois Workers' Compensation Act, the claimant must prove that the injury arose out of and in the course of his employment with respondent. *Saunders v. Industrial Commission,* 301 Ill.App.3d 643 (1998), 705 N.E. 2d 103, 235 Ill.Dec. 490. Under the Illinois Workers' Compensation Act, an employer is not liable for an injury sustained when an employee exposes himself to a danger which is not arising out of his employment. *Lumaghi Coal Co. v. Industrial Commission,* 318 Ill. 151 (1925), 149 N.E. 11. Recklessly performing ones job duties differs considerably from doing something unconnected with the work. *Saunders v. Industrial Commission,* 301 Ill.App.3d 643 at 648, 705 N.E. 2d 103 at 106, 235 Ill.Dec. 490 at 493.

Petitioner claims an injury occurring on July 6, 2012 when he entered the restricted area of Mega machine and was struck by a moving shuttle while attempting to repair the machine. Both petitioner and respondent's witness, Mr. Sieffert, testified that petitioner was working as the third shift wash line team lead for respondent on July 6, 2012. A copy of the written job description for a wash line team lead is Rx. 7. Mr. Sieffert testified that petitioner was provided with a copy of this job description at the time of his promotion. A review of this document reveals that a maintenance and repair of the machines operated by respondent is not one of the duties or responsibilities of a wash line team lead. In fact, the only responsibilities of a wash line team lead with respect to equipment malfunctions is to report the malfunction to his supervisor and preparing a maintenance request ticket. Petitioner admitted that he was not trained in maintenance repairs on Mega by either respondent or Caterpillar. The Arbitrator adopts the above facts as special findings of fact for the Award.

Mr. Sieffert testified that respondent operates as an independent contractor for Caterpillar at its Joliet facility. They were hired to operate the painting and washing machines at the facility. Mr. Sieffert testified that Caterpillar owned the machines that were operated by respondent's employees and further indicated that Caterpillar was responsible for repairing these machines in the event of a breakdown. In fact, Mr. Sieffert testified that respondent did not employ any maintenance staff at the Caterpillar facility.

Petitioner admitted that he had received a copy of the Summary of Joliet Facility Safety Rules and Regulations during his orientation and was familiar with same. These rules require that employees are to stay out of any hazardous or restricted areas unless they were assigned to that area. Mr. Sieffert testified that if an unauthorized employee were to enter a restricted area, then that employee would be terminated. This policy was borne out when the petitioner was terminated for his violation of this safety rule following the July 6, 2012 accident when he entered a restricted area for which he was unauthorized to enter.

These same rules continue to require that lockout/tagout procedures be followed when a machine was being repaired or cleaned. Petitioner testified that he was familiar with the lockout/tagout procedures which were posted on the electronic control box at Mega. He testified that before entering the machine, he merely hit the emergency stop button rather than complete the required lockout/tagout procedure. He further testified that he had not been issued a personal lock that was required to complete the lockout/tagout procedure as only maintenance personnel were issued locks.

Petitioner testified that he took it upon himself to enter an area restricted to maintenance personnel only to repair Mega due to delayed response from the contingency maintenance personnel working during a Caterpillar labor strike. He admitted that he knew that this was a dangerous situation when he instructed his coworker to wait outside the machine. While petitioner claimed that he had entered Mega to repair similar problems in the past, he admitted that none of the Caterpillar supervisors or CR Coatings supervisors had knowledge of his entering Mega for prior repairs.

In the case at bar this petitioner left the area where his duties required him to go when he entered the internal area of Mega that was restricted to maintenance personnel only. Petitioner admitted that he did not follow the safety rules and complete the lockout/tagout procedure before entering Mega and further admitted that he was never provided with a personal lock required to complete the lockout/tagout procedure.

Upon entering Mega, petitioner attempted to repair the dangerous machine by inserting a pry bar into the machine to dislodge a stuck basket on a pressurized machine that had not been reduced to a zero energy state. Signs were clearly posted on Mega stating that the internal workings of the machine were restricted to maintenance personnel only. Respondent's witness testified that Respondent did not employ any maintenance personnel. Petitioner admitted that he was not trained in maintenance and repair of Mega by Respondent or Caterpillar. Further, Respondent's witness testified that petitioner was unauthorized to enter the restricted area of Mega. While petitioner testified that he had entered Mega before to assist in similar repairs, he admitted that no supervisors from Respondent or Caterpillar had ever witnessed him doing so. There is no provision for such volunteering under a strict interpretation of the concept of the defense of a violation of a safety rule under workers compensation.

Thus the Arbitrator makes a special findings of fact that petitioner took himself outside of the sphere of his employment when he violated the safety rules by entering the restricted area of Mega, where he was unauthorized to be, to perform repairs that he was untrained to perform. Further the concept of selective law enforcement as most often found in criminal cases and denied by the U. S. Supreme Court in that setting early in the last century, has no part in the determination of safety rule violation cases under the Worker Compensation Act determinations.

Based upon the totality of the evidence, despite the obvious qualities of the worker in terms of work ethic as acknowledged by the company witness, and as summarized above, the Arbitrator finds as a matter of material fact and as a conclusion of law that the accident of July 6, 2012 was not in the course of nor did it arise out of petitioner's employment with Respondent under the Workers Compensation Act.

F: Is Petitioner's current condition of ill-being causally related to the injury?

As this accident has been found to not arise out of nor was it in the course of petitioner's employment, whether or not petitioner's injuries are causally related to the July 6, 2012 injury is moot.

Nothwithstanding the above the Arbitrator has studied the totality of the evidence and finds as follows: the current condition of ill-being of petitioner's cervical and lumbar spine and head is not causally related to the accident of July 6, 2012.

Petitioner presented to the emergency room at Provena Saint Joseph Medical Center on July 7, 2012 and July 10, 2012. Contrary to the petitioner's trial testimony and the histories provided to Dr. Masood, Dr. Glaser, and Dr. Walsh, petitioner actually denied any neck or back complaints during both of these emergency room visits. Furthermore, while petitioner later reported issues with loss of memory and dizziness to Dr. Lipson, he denied any loss of memory or dizziness during his emergency room visits.

Over and above the contradictory histories provided throughout petitioner's medical records, Dr. Walsh opined that, at the time of his September 10, 2012 examination, petitioner's subjective complaints were out of proportion to his objective abnormalities. The doctor continued to note that during his physical examination petitioner exhibited behaviors consistent with symptom magnification. Dr. Walsh opined that petitioner's reported symptoms in September 2012 were not causally related to the July 6, 2012 incident. With respect to the incident in question, Dr. Walsh opined that petitioner required no work restrictions and had reached maximum medical improvement within weeks of the incident.

J. Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Respondent is not liable for payment for any medical services as the accident did not arise out of petitioner's employment with respondent.

K. What temporary total disability benefits are due to petitioner?

Respondent is not liable for any lost time benefits as the accident did not arise out of petitioner's employment with respondent.

M. Should penalties or fees be imposed upon Respondent?

Petitioner has requested that penalties and fees be assessed on Respondent under sections 19(k), 19(l) and 16 of the Act. As this accident was found to not arise out petitioner's employment with respondent, the petitioner has not been awarded any medical or lost time benefits. As the respondent is not liable for payment of any benefits to petitioner, the petitioner is not entitled to penalties in this matter. Moreover, the evidence is overwhelming that Respondent's actions in this matter have been reasonable.

#01 Arbitrator George J. Andros

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Mark Retterer,
Petitioner,

vs. NO. 13 WC 04360

14IWCC0255

West Aurora School District #129,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering, the issues of temporary total disability, permanent partial disability, and vocational rehabilitation/maintenance and being advised of the facts and law affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on May 23, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

14IWCC0255

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 7 2014

Daniel R. Donohoo

o-03/19/14
drd/wj
68

Charles J. DeVriendt

DISSENT

I do not concur with the majority that Petitioner was entitled to maintenance or vocational rehabilitation services. I would have reversed the Arbitrator's awards of those benefits. Accordingly, I respectfully dissent.

The record reveals that Petitioner issued a letter of resignation on January 24, 2013, effective immediately. He was at maximum medical improvement at the time of his resignation. A functional capacity evaluation assessed Petitioner could work at a medium to heavy physical demand level, which still allowed Petitioner to fulfill virtually all of the regular duties of his job as custodian. Respondent's Director of Operations testified Respondent could accommodate the restrictions imposed pursuant to the evaluation. The Arbitrator noted it "was more likely than not" that Petitioner had Asberger's syndrome, a mild form of autism, and that he did not really understand the meaning of his letter of resignation. In my opinion the record does not support those conclusions. The only mention of the Asberger's syndrome in the record was in a question posed by Petitioner's lawyer, which does not constitute evidence. In my opinion, Petitioner voluntarily left his employment and therefore should not be entitled to maintenance.

In order to be entitled to vocational rehabilitation services, a claimant must show that he can no longer perform the duties of his current job and that he had tried and failed to find other employment after a diligent job search. In this case, Petitioner proved neither. It appears that Petitioner could indeed have performed his duties as custodian, based on the functional capacity evaluation and the testimony of Respondent's Director of Operations that Respondent could accommodate the very limited restrictions the assessment imposed. In addition, Petitioner's job search log spans only three weeks and included just a very few number of contacts with potential employers. It simply did not constitute a diligent job search. Because Petitioner did not sustain his burden of proving he could no longer perform the duties of his current employment and because he did not sustain his burden of proving a diligent job search, I do not believe he is entitled to vocational rehabilitation services.

For the reasons stated above, I respectfully dissent.

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

RETTERER, MARK
Employee/Petitioner

Case# **13WC004360**

14IWCC0255

SCHOOL DISTRICT 129
Employer/Respondent

On 5/23/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

5122 PORRO NIERMANN & PETERSEN LLC
KURT A NIERMANN
821 W GALENDA BLVD
AURORA, IL 60506

2461 NYHAN BAMBRICK KINZIE & LOWRY
LINDA ARUN ROBERT
20 N CLARK ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

MARK RETTERER
Employee/Petitioner

v.

SCHOOL DIST 129
Employer/Respondent

Case # **13** WC **4360**

Consolidated cases: _____

14IWCC0255

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, Arbitrator of the Commission, in the city of **Geneva**, on **4/11/13 and 5/7/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☒ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Vocational Rehabilitation Services**

14IWCC0255

FINDINGS

On the date of accident, **9/19/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$26,000**; the average weekly wage was **$500.00**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **2** dependent children.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $333.33/week for 68 5/7 weeks, commencing 10/5/11 through 1/7/13 and 1/24/13 to 3/15/13, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner the temporary total disability benefits that have accrued from 9/19/11 through 4/11/13 and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall provide petitioner with vocational rehabilitation services.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

May 22, 2013
Date

ICArbDec19(b)

MAY 23 2013

Petitioner worked as a custodian for 25 years. Petitioner started working for respondent as a custodian in 2008. On 9/19/11, petitioner noted the onset of right elbow pain with repetitive activities at work. (RX6 4/14/12 report) Petitioner sought treatment with Dr. Christofersen. This physician documented pain in the lateral epicondyle from mopping a floor at work. Dr. Christofersen prescribed oral steroids and provided petitioner with a brace, a month of therapy and a cortisone injection. (RX6 4/14/12 report) Each of these treatments provided limited relief of petitioner's symptoms. Petitioner returned to Dr. Christofersen on 10/4/11 complaining of a flare-up of the pain after work. Petitioner was further restricted from lifting more than three pounds, and against gripping and twisting with the right hand. (RX6 4/14/12 report p.2) Respondent paid TTD rather than accommodate the restriction.

Dr. Christofersen and his associates provided a lengthy course of conservative care. A repeat MRI was performed on 10/26/11. Dr. Christofersen read the MRI as showing moderate tendinosis and a partial interstitial tear of the common extensor tendon, along with moderately severe tendinosis and myxoid degeneration of partial tear of the distal biceps tendon. Dr. Christofersen diagnosed the injury as involving right lateral epicondylitis and a right elbow strain. Petitioner was then examined by the surgeon, Dr. White, on 11/3/11. Dr. White documented that petitioner's employer had told him to not come back to work until he was ready for regular work duty. Petitioner also testified at hearing that it was school district policy that workers could not return to work unless it was full duty work. Petitioner returned to Dr. White on 11/21/11 reporting no improvement in his condition. Dr. White recommended surgery for the injury.

Respondent sent petitioner for his first independent medical examination with Dr. Mark Cohen on 12/16/11. (RX3) Dr. Cohen outlined the history of onset of the condition and treatment history from the records. He noted that petitioner was first seen at an occupational clinic in September of 2011 where he complained of developing right elbow pain while mopping at work. The occupational doctors had diagnosed the condition as lateral epicondylitis and prescribed a tapering dose of oral prednisone. Petitioner returned to the clinic on 9/27/11 reporting some improvement in his condition. Additional prednisone was offered. During the follow up visit on 10/4/11, petitioner was given a cortisone injection into the elbow. He was also referred out for a MRI scan which revealed signal changes consistent with lateral epicondylitis. Bracing and Motrin were prescribed. Conservative measures were continued through the point of petitioner's visit with Dr. Cohen. A second MRI from 10/26/11 showed moderate tendinosis with a partial insertional tear of the common extensor tendon at the right elbow lateral epicondyle. Additional abnormalities were also noted at the distal biceps tendon insertion. Dr. Cohen's examination revealed mild to moderate point tenderness over the lateral epicondyle. Dr. Cohen diagnosed the condition as involving chronic tendinopathy of the wrist and digital extensor muscles at their humeral origin. Dr. Cohen felt that a course of therapy would relieve the condition and that surgery was not warranted. Dr. Cohen further noted that he knew of no pre-existing condition which might affect his case.

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Dr Cohen authored an addendum to his report on 3/9/12 after reviewing all of petitioner's medical records. Dr. Cohen felt that petitioner's diagnosis did "appear to be associated with his occupational activities". (RX3) He continued to believe that petitioner's prognosis was favorable. He felt that surgery was the last resort for this type of injury.

Petitioner returned to Dr. Cohen again on 6/20/12. Petitioner reported that his elbow pain had actually worsened over the past six months and he now had pain along the lateral aspect of his arm, well above the elbow as well as the medial aspect of his proximal forearm. He also reported pain over the dorsoradial forearm. Dr. Cohen felt that some of his symptoms did relate to the epicondylitis and some of the complaints were difficult to explain. Even so, Dr. Cohen felt that it was reasonable to proceed with tennis elbow surgery given that he was nine months out from the onset of the condition. Dr. Cohen cautioned that petitioner's prognosis was guarded as the surgical procedure involved one of the less predictable medical procedures and given the additional complaints he had documented. Even so, Dr. Cohen agreed with the recommendation for surgery. He also maintained to the causal opinions he had offered in the previous report.

Petitioner underwent the surgical release on 7/20/12. The surgery provided limited relief. Petitioner completed a course of therapy and moved on to home exercises.

Dr. Cohen reassessed petitioner on 11/7/12. Dr. Cohen noted that petitioner's epicondylitis surgery appeared to be a "relative failure". (RX3 11/7/12 report p.2) He agreed with the treating physician that petitioner should be given an additional period of therapy to build strength and endurance. He again characterized petitioner's prognosis as guarded.

The 12/10/12 FCE determined that petitioner did not meet all the requirements of the custodian position. (RX4 p.2) The FCE tested petitioner's capacities for certain material handling activities against the job requirements outlined in the formal job description for the custodian position. (RX4 p.2) The job description was provided by the employer. (RX4 p.2) According to the FCE report, petitioner did not meet the demands for occasional squat lifting as is noted on the FCE. The FCE also identified petitioner's safe lifting capacity at 75 lbs when petitioner testified that his custodial job required occasional lifting at 100 lbs. Petitioner's capacity for unilateral lift from floor to waist is documented at 40 lbs on an occasional basis. (RX4 p.2) Petitioner also had difficulty with the mopping and the dusting/wiping simulations. The tester characterized petitioner's dusting/wiping difficulties as "reliable". It was noted that Petitioner had self terminated the mopping portion of the FCE after approximately 3 minutes due to reports of pain, but that there were no objective findings to support the pain complaints.

Petitioner did return to work on 1/7/13. Elizabeth Wendel was now his supervisor. Ms. Wendel testified that she was unaware that petitioner had any restrictions. This is information she would normally receive from Mr. Schiller but he led her to believe that petitioner was unrestricted in his work capacities. In any event, petitioner was assigned to a light duty position for his first week back at work.

Petitioner testified that he was disinfecting desks, wiping windows and handling garbage during this week. The case nurse reports document his success in performing this work. (RX6 1/26/13 report) However, this was only a temporary assignment while the person who held the position was away. For his second week of work, petitioner was moved to a position where he was vacuuming, cleaning bathrooms and dusting. These activities caused a flare-up in petitioner's right elbow pain. (RX6 1/26/13 report) Petitioner's pain level reached a 5/10 level and he took Ibuprofen for 3 days. This position was also temporary. By 1/24/13, respondent was moving petitioner into an unrestricted custodian position where petitioner would be cleaning the cafeteria, seven bathrooms and an unspecified number of classrooms. Ms. Wendel was not aware that petitioner had any work restrictions when she was assigning him to the full custodial job.

Petitioner was informed of his new assignment during a 1/23/13 meeting with Mr. Schiller and Ms. Wendel. Petitioner returned to Dr. White for an examination on 1/24/13. He complained of a flare up of pain with his new work activities. As of that visit, Dr. White restricted petitioner from returning to work. Petitioner testified that Dr. White informed him that he was no longer able to be a custodian. Petitioner called Mr. Schiller after the appointment and Schiller asked petitioner to get a note from Dr. White about petitioner not being able to return to work as a custodian. Petitioner dropped off the note from Dr. White as well as his keys and FOB with Schiller's administrative assistant. (PX1) Mr Schiller was not there at the time. However, Mr. Schiller later called petitioner asking whether petitioner could get something in writing from Dr. White about petitioner's inability to return to work as a custodian. Petitioner checked with Dr. White's office and called Schiller back, reporting that Dr. White would not author such a note for two months. Petitioner testified that Mr. Schiller then suggested to petitioner that he should resign from the district if he could not perform the custodial duties. Mr. Schiller had his office draft up a resignation form which he had petitioner sign on 1/24/13. (PX2)

Petitioner testified that he did not understand the significance of the form which Mr. Schiller had him - sign. Petitioner did not intend to resign from the district. He only knew that his doctor thought he was finished as a custodian and that is what petitioner told Mr. Schiller. After signing Schiller's form, petitioner went to consult with his attorney about what had happened. Petitioner's counsel faxed a letter off to the district explaining that petitioner had no idea what Mr. Schiller had told him to sign and that he had never intended to resign. (PX3) The district responded by sending petitioner a letter accepting petitioner's resignation effective 2/4/13. (PX4)

Mr. Schiller testified about the resignation form. He admitted that he had his office draft up the resignation form and he had petitioner sign the form. He was not present at the time petitioner signed the form and he could not explain whether petitioner understood what he was signing. He also admitted on cross examination that petitioner was not a confrontational employee and that petitioner did was he was told to do. He testified that to his knowledge Petitioner suffered from aspergergers syndrome. Mr. Schiller believed that petitioner was scared to deal with him. He also admitted that he thought petitioner was somewhat slow- even though he did not want to think of his employees as

slower functioning as a general matter. However, Mr. Schiller's performance evaluation from 4/19/11 outlines his thoughts on petitioner. The evaluation criticized petitioner for his learning ability and initiative, his dependability and his judgment. (RX1) Mr. Schiller explained that petitioner was slow to learn procedures and rules and other details of his position. Mr. Schiller further explained the dependability issue as involving petitioner's inability to perform his job without close supervision. The judgment issue challenged petitioner's ability to make sound decisions and to use common sense.

Dr. Cohen's final examination took place on 3/15/13. (RX3) Dr. Cohen noted that his opinions had not materially changed since his last report in November of 2012. The diagnosis was tennis elbow treated surgically with persistent symptoms. He noted that petitioner's subjective complaints correlated well with his objective findings. Dr. Cohen felt that petitioner had reached MMI and he recommended that petitioner perform range of motion, stretching and strengthening exercises at home. He further opined that petitioner could return to work in accordance with the FCE findings.

Issue F- Whether Petitioner's Current Condition of Ill-Being Is Causally Related To The 9/19/11 Accident?

Petitioner has proven that his condition of ill-being in his right arm is causally related to the 9/19/11 work accident. Respondent's own medical examiner causally related both the injury and the treatment to the accident. There is no evidence to the contrary or even evidence that petitioner had problems with the right arm during the years he worked elsewhere as a custodian.

Issue L- What Temporary Total Disability Benefits Are Owed To Petitioner?

Petitioner has proven that he was temporarily and totally disabled from 10/5/11 through 1/7/13 and again from 1/24/13 through 3/15/13. Petitioner's ongoing treatment and work restrictions are outlined above. Respondent's IME physician even agreed with the need for restrictions and ultimately released petitioner to work within the findings of the FCE. This FCE determined that petitioner had certain limitations which did not match the custodial position.

The initial period of TTD ended on 1/7/13 when petitioner returned to a light duty position. That position lasted a week and petitioner was moved into a non-restricted position the following week. Petitioner claimed that the second week of work involved activities which aggravated his condition. This is consistent with the histories contained in respondent's exhibits. (RX3 3/15/13 report p.1; RX6 1/26/13 report) In any event, despite the limitations identified on the FCE, respondent planned to move petitioner into a fully unrestricted custodial position as of 1/24/13. This assignment was not an accommodative position and petitioner returned to Dr. White with complaints of pain, and who informed petitioner that he was finished with custodial work. Petitioner informed Mr. Schiller of the doctor's opinion which led to petitioner's purported resignation. MMI was finally declared by Dr. Cohen during his final examination of petitioner on 3/15/13. The Arbitrator notes that he closely observed the witnesses as they testified and examined the record in great detail, and concludes that

Petitioner did not in fact understand the resignation note he signed nor the impact it would have on his case. The Arbitrator finds that it is far more likely than not that Petitioner, who suffers from a mental disability know as Aspergers syndrome, was merely following the directions of his supervisor in signing the note the supervisor himself had ordered prepared. Immediately upon informing his attorney of what had transpired,that attorney sent a letter to the Respondent repudiating the resignation letter, which was ignored by the Respondent. Additionally, testimony by Respondent's witnesses clearly set forth that respondent had a position open at the time of hearing that Petitioner could have worked at with slight modification to the duties involved.

Based on the record as a whole the Arbitrator finds that as Respondent did not provide an accommodative position as of 1/24/13, Petitioner is entitled to TTD from 1/24/13 through 3/15/13. Pursuant to stipulation between the parties, respondent shall receive credit for the TTD that it paid to petitioner.

Issue L- What Maintenance Benefits Are Owed To Petitioner?

Issue O- Whether Petitioner Is Entitled To Vocational Rehabilitation Services?

Petitioner has further proven his need for vocational rehabilitation and maintenance benefits. Respondent denies responsibility for vocational rehabilitation based on its claim that petitioner resigned from the school. However, it is apparent under the circumstances that petitioner is in need of vocational rehabilitation services and maintenance.

Petitioner' testified that his doctor told him he was finished as a custodian. The actual language in the doctor's notes indicate that Petitioner's prognosis for returning to full duty at his job was poor. Petitioner took that information to his supervisor which led to the events surrounding the alleged resignation. This Arbitrator believes that Mr. Schiller knew that petitioner did as he was told and was an employee who would not challenge him on the directive to sign the resignation form. Mr. Schiller did not explain the consequences of the form to petitioner when he came in to sign it. Mr. Schiller directed his office to prepare the resignation form. He had the form addressed to the school board seeking petitioner's immediate resignation. Petitioner credibly claimed that he did not understand what the supervisor was having him sign. We further know that petitioner did not have an opportunity to consult with his attorney nor his union representative before signing the form. (PX3) When petitioner consulted with his attorney, correspondence was immediately directed to the district clarifying that petitioner never intended to resign. Mr. Schiller explained that resignations required board approval so we know that the resignation had not occurred without board action. However, rather than responding to petitioner's clarification, the district sent a letter accepting petitioner's resignation a week after they had received the clarification. Under the circumstances, it is clear that petitioner did not intend to tender a resignation.

The Arbitrator also notes that Dr. White had predicted on 1/24/13 that petitioner's prognosis for returning to work was poor. (RX6 1/26/13 report p.2) . The IME doctor documenting respondent's noncompliance with petitioner's work restrictions and his flare-ups with the temporary assignments is also in the record. (RX3 3/15/13 report p.1) The FCE identified certain activities and limitations which did not fully match the custodial duties. In the face of these details, respondent was trying to place petitioner into a full duty custodial position effective 1/24/13. The parties dispute whether the district could have accommodated petitioner's restrictions. However, petitioner's immediate supervisor admitted that she had no idea petitioner needed work restrictions at the time she was slotting him for the full duty custodial position in 1/24/13. Thus, it is fairly clear that the school was not considering any accommodation of his restrictions. Both Dr. Cohen, Respondent's IME, and Dr. White found that Petitioner was at MMI.

As respondent has refused to accommodate petitioner's restrictions, respondent shall provide the vocational rehabilitation services which petitioner has requested as well as maintenance during the search. Petitioner's efforts to find work after 1/24/13 are documented in PX5, RX6 and in petitioner's testimony. The need for professional services is highlighted by the events leading to the alleged resignation as well as Mr. Schiller's documented observations of petitioner's vocational deficits. Mr. Schiller had supervised petitioner for years and he said he was familiar with petitioner and his work abilities. Mr. Schiller outlined his observations about petitioner's difficulty in learning procedures, rules and other details of a custodial position and even his inability to perform the work without close supervision. Mr. Schiller further highlighted petitioner's lack of ability to make sound decisions and to use common sense. Petitioner had already been performing custodial work for 25 years by the time Mr. Schiller made his observations. Having observed the petitioner during the hearing and considering the evidence, the Arbitrator is persuaded as to Mr. Schiller's assessment of petitioner's capabilities.

Respondent also presented its case nurse manager to dispute petitioner's pain complaints and to show that petitioner could perform all of the activities of his job. However, this case nurse manager offered nothing of substance to detract from petitioner's need for vocational rehabilitation services or maintenance. Ms. Bondi's observations on petitioner's pain behaviors were at best the opinions of a layman in the employ of the respondent. Further, the relevance of the observations is highly questionable as they were not made in the context of petitioner performing work in any capacity. Finally, Ms. Bondi peppered her reports with comments challenging petitioner's complaints from the outset of her involvement in the case. By her 9/1/12 report, Ms. Bondi dropped any pretense of objectivity and she jumped to her thereafter repeated conclusion that she was dealing with "a case of subjective complaints far outweighing objective findings". The Arbitrator also notes that Bondi had been exclusively employed by Respondent insurance companies, and in her testimony she mentioned that she had previously done work on behalf of Wramsco among other agencies.Such bias is understandable if it is understood that her role is as an agent of the respondent rather than as a neutral reporter of details. Ms. Bondi's reports did provide a useful chronology of treatment. However, her opinions on pain levels and work capacity are not persuasive or even relevant. Based on the record as a

whole, the Arbitrator awards the vocational rehabilitation benefits requested by Petitioner. The Arbitrator cannot,however award prospective maintenance and therefore declines to do so.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lawrence Dassinger,
Petitioner,

vs. NO: 04 WC 04041

14IWCC0256

Tiffany Express, Inc.,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of dismissal, reinstatement, various evidentiary rulings, and penalties and fees, and being advised of the facts and law, amplifies with additional language the June 10, 2013, Decision of Arbitrator Andros as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission has adopted and affirmed the Decision of the Arbitrator as it finds that he has given careful consideration to the record and facts as presented to him. The record demonstrates the Arbitrator's abject frustration with the Petitioner's refusal to allow the matter to proceed and with his refusal to allow for its presentation at trial.

This record demonstrates a frustration that has been endemic to the legal process for the past half century, identified by our Supreme Court in *Bromberg v. Industrial Comm'n*, 97 Ill. 2d 395, 454 N.E.2d 661, 73 Ill. Dec. 564 (1983). The Supreme Court in *Bromberg* cited to the Circuit Court Decision which affirmed the Commission's dismissal of the claimant's Petition for Review after the claimant repeatedly failed to appear despite numerous continuances to enable him to do so, coupled with a failure to present an authenticated transcript. The Circuit Court made the following findings and apt observations:

"I have listened with care to the arguments of counsel. I have reviewed the very extensive briefs that were filed. I find no abuse of discretion by the Industrial Commission. I cannot say that this decision is contrary to the manifest weight of the evidence or contrary to law. In the Court's opinion this is symptomatic of a malaise that grips the entire metropolitan system of justice.

The endless delays, the endless failures of attorneys to appear without excuse, either real or apparent, to inform a hearing officer as to the reasons for delay has reflected for years adversely upon the effective administration of justice and continues to do so and will continue to do so until the Appellate Courts start acting to see to it that lawyers fulfill their responsibilities to their clients and appear on the days and dates set for hearing that move hearings to a proper conclusion."

In the case at bar, the Arbitrator was equally frustrated by endless delays that were the result of an intentional strategy employed by Petitioner to ensure that the matter never moved forward. Finally, in abject frustration, Arbitrator Andros saw no option but to dismiss the matter for want of prosecution and to refuse to reinstate it. The Commission adopts and affirms the Decision of the Arbitrator as it as it recognizes and agrees with the Arbitrator's frustration. This act of the Arbitrator was not an abuse of discretion.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 10, 2013 is hereby affirmed and adopted and expanded with additional language. The claim is hereby dismissed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 7 2014

Michael J. Brennan

Charles J. DeVriendt

Ruth W. White

o-02/19/14
mjb/dak
52

STATE OF ILLINOIS)
)
COUNTY OF WILL)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g)
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION

Lawrence Dassinger
Employee/Petitioner

v.

Tiffany Express, Inc.
Employer/Respondent

Case # **04** WC **04041**

14IWCC0256

The *petitioner* filed a petition or motion for **reinstatement**

on **Feb 11, 2013** , and properly served all parties. The matter came before me on

April 16th, 2013 in the city of **New Lenox** . After hearing

the parties' arguments and due deliberations, I hereby *deny* the petition.

A record of the hearing *was* made.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Arbitrator has carefully listened to the Petition and Response on the record. The Arbitrator has dealt with this case in detail during many status calls and conferences since being assigned to the Will County status call in January 2012.

After deliberating on the same, the Arbitrator finds the facts against the reinstatement to be compelling.

Considering the grounds relied upon by the Petitioner and the objections of the Respondent while applying standards of equity the Arbitrator finds as a matter of fact and conclusion of law that the Petitioner in the case at bar has failed to establish the grounds to reinstate this case.

Unless a *Petition for Review* is filed within 30 days from the date of receipt of this order, and a review perfected in accordance with the Act and the Rules, this order will be entered as the decision of the Workers' Compensation Commission.

Signature of arbitrator

June 10, 2013
Date

JUN 17 2013

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Joseph Vetter,
Petitioner,

vs. NO: 11 WC 22915

14IWCC0257

Roto Rooter,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident and jurisdiction and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 24, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0257

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 7 2014

Daniel R. Donohoo

o-03/25/14
drd/wj
68

Ruth W. White

Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

VETTER, JOSEPH
Employee/Petitioner

Case# **11WC022915**

ROTO ROOTER
Employer/Respondent

14IWCC0257

On 1/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4888 SHORT & SMITH PC
KEITH SHORT
515 MADISON AVE
WOOD RIVER, IL 62095

2623 McANDREWS & NORGLE LLC
MATTHEW T McENERY
53 W JACKSON BLVD SUITE 315
CHICAGO, IL 60604

STATE OF ILLINOIS)
)SS.
COUNTY OF **Williamson**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Joseph Vetter
Employee/Petitioner

v.

Roto Rooter
Employer/Respondent

Case # **11** WC **22915**

Consolidated cases: __

14IWCC0257

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **11/20/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☒ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Prospective medical**

14IWCC0257

FINDINGS

On **5/27/11**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$47,933.34**; the average weekly wage was **$921.79**.

On the date of accident, Petitioner was **41** years of age, *married* with **0** dependent children.

Petitioner *has not* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall authorize medical treatment as prescribed by his treating physicians for his condition of carpal tunnel syndrome.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

1/7/13
Date

JAN 24 2013

14IWCC0257

Findings of Fact

The issues in dispute at arbitration are as follows: Jurisdiction; Accident; Causal Connection and Prospective medical treatment.

Petitioner was a 41 year old full time plumber who worked exclusively for Respondent in 2009 and 2010. Respondent hired Petitioner from their St. Charles, Missouri office in 2009. When Petitioner was first hired by Respondent in 2009 he was only licensed to work in Illinois and all of his work was in Illinois until mid-late 2010. In the first year of his employment he worked exclusively in Illinois. Petitioner testified that subsequent to receiving a Missouri license, 80% of his assignments were in Illinois and 20% were in Missouri. When he received a job assignment he would leave his home in Cottage Hills, Illinois and drive to the location. Petitioner would receive his job assignments from Respondent's Chicago regional office. He received assignments on a pager supplied by Respondent. He received his paycheck from the Respondent's automated payroll department in Ohio.

Petitioner described his job requires him to use both his hands in performing the job of a plumber. This includes using both hands to handle plumbing parts and vibratory tools on a regular basis. Such tools include the following: electric saw, jack hammer, pipe wrenches and pipe cutters. He would use such tools as a "sawzall" and a pipe cutter 20-30 times per day.

Petitioner began developing problems with both his hands in May, 2011. He was eventually seen by Dr. Michael Beatty and was diagnosed with bilateral CTS. The diagnosis was confirmed by EMG. Dr. Beatty told Petitioner to continue working until such time that surgery on his hands would be approved. Respondent denied liability and refused to pay for the CTS surgery. Dr. Beatty testified via evidence deposition that Petitioner's condition was causally connected to his employment activities.

Respondent retained Dr. Charles Goldfarb as an IME. Dr. Goldfarb examined the Petitioner on September 29, 2011. Dr. Goldfarb testified via evidence deposition that although Petitioner's employment was not the prevailing factor in his diagnosis of carpal tunnel syndrome, it was a factor nonetheless.

Respondent called Richard Maloney to testify. He is Petitioner's supervisor. Mr. Maloney confirmed that at least 75% of the Petitioner's work was performed in Illinois. He confirmed that Petitioner only goes to the St. Charles office once a week when he turns in his job tickets and mileage information.

Subsequent to the instant filing, Petitioner had another accident resulting in injury to his shoulder. Petitioner was lifting a sink. He felt the sink slipping through his hands; he caught the sink and felt a tear in his shoulder. At the time of arbitration of this case Petitioner was receiving TTD benefits under the Illinois Workers' Compensation Act for that shoulder injury as it occurred in Illinois. The shoulder claim is filed separately and is not directly part of this litigation.

Based on the foregoing, the Arbitrator makes the following conclusions:

1. Respondent was operating under and subject to the Illinois Workers' Compensation Act. Petitioner met his burden of proving jurisdiction in this matter. He performed 75% to 80% of his work in Illinois. Respondent's witness confirmed this testimony. As such, it would be reasonable to conclude that a majority of Petitioner's repetitive activities allegedly leading to his carpal tunnel syndrome, occurred in Illinois.

2. Petitioner has met of his burden of proving that he sustained an accident arising out of and in the course of his employment with the Respondent. Petitioner credibly testified that his job required regular use of vibratory hand tools, including electric saws and jack hammers, as well as other tools requiring forceful gripping and forceful flexion / extension, including pipe wrenches, screwdrivers, hammers, caulking guns and scrapers. Respondent offered no evidence to counter Petitioner's testimony in this regard.

3. Petitioner provided timely notice of his accident to Respondent. Respondent offered no testimony to refute this issue.

4. Petitioner has met his burden of proving that his condition of bilateral carpal tunnel syndrome is causally related to his employment. The Arbitrator notes the medical evidence clearly supports the Petitioner on this issue. Furthermore, the Respondent's IME confirmed that the Petitioner's employment was a factor in the diagnosis of this condition. Essentially, Respondent did not provide any evidence to dispute this issue.

5. Based on the findings above, the Respondent shall authorize medical treatment for Petitioner's carpal tunnel syndrome as recommended by the treating physician, Dr. Beatty, and shall pay any TTD related to any lost time resulting from the treatment of this condition.

STATE OF ILLINOIS	)	☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF JEFFERSON	)	☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Eric Bailey,
Petitioner,

vs. NO: 11 WC 26751

14IWCC0258

Granite City Police Department,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of temporary total disability and permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof..

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 6, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0258

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 7 2014

Daniel R. Donohoo

Ruth W. White

Charles J. DeVriendt

o-03/26/14
drd/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BAILEY, ERIC
Employee/Petitioner

Case# **11WC026751**

GRANITE CITY POLICE DEPARTMENT
Employer/Respondent

14IWCC0258

On 6/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4463 GALANTI LAW OFFICES
DAVID M GALANTI
PO BOX 99
EAST ALTON, IL 62024

0299 KEEFE & DEPAULI PC
TOM H KUERGELEIS
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ERIC BAILEY
Employee/Petitioner

v.

GRANITE CITY POLICE DEPARTMENT
Employer/Respondent

Case # 11 WC 026751

Consolidated cases: 14IWCC0258

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **April 4, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other ___

FINDINGS

On **January 5, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned **$67,745.08**; the average weekly wage was **$1,302.79**.

On the date of accident, Petitioner was **39** years of age, *married* with **1** children under 18.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$1,737.94** for TTD, **$-0-** for TPD, **$-0-** for maintenance, and **$-0-** for other benefits, for a total credit of **$1,737.94**.

Respondent is entitled to a credit of **$-0-** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $669.54 per week for 25 weeks because the injury sustained caused the 5% loss of the person as a whole as provided in Section 8(d)2 of the Act.

The medical expenses claimed for the Petitioner's surgery, Petitioner's Exhibit #10, and the temporary total disability benefits claimed from July 3, 2011 until December 2, 2011 are denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

6/6/13
Date

JUN - 6 2013

14IWCC0258

FINDINGS OF FACT

Petitioner testified that on January 5, 2011 he had been employed by the City of Granite City as a policeman for approximately five years.

On January 5, 2011, while engaged in canine training, the dog jerked the leash causing Petitioner to experience immediate low back pain. Petitioner denied prior back problems.

Subsequent to the occurrence, Petitioner was seen by Dr. Eavenson, who rendered conservative care and had an MRI performed on January 7, 2011. Petitioner lost time from work from January 6, 2011 through January 22, 2011, and was paid temporary total disability benefits for that period of lost time.

Petitioner then came under the care of Dr. Gornet, who referred Petitioner to Dr. Boutwell. Dr. Boutwell performed injections that gave Petitioner temporary relief of his symptoms, and Dr. Gornet released Petitioner to return to work without restriction on March 17, 2011.

Petitioner then returned to Dr. Gornet on June 13, 2011, complaining of a low level of back pain. Petitioner rated the back pain at a 2 out of a potential 10.

Petitioner provided a history to Dr. Eavenson of experiencing additional and more serious back pain when getting out of bed on or about July 11, 2011. Petitioner denied specific injury to his back.

Petitioner returned to Dr. Gornet who on September 19, 2011 placed Petitioner on light duty. On October 21, 2011, Dr. Gornet performed surgery consisting of a laminotomy at L5-S1 on the left with a posterior fusion at L5-S1 with Medtronic fixation. The operative note reveals that Dr. Gornet performed decompression of the L5-S1 nerve root by removing a mild to moderate ridge of bone. In addition, hardware was placed at the L5-S1 level and Dr. Gornet's operative procedure was to correct a pre-operative and post-operative diagnosis of isthmic spondylolisthesis at L5-S1.

Subsequently, Petitioner was released to return to work. At arbitration, his complaints consisted of stiffness when sitting and mobility restrictions that were present in the morning.

A review of Petitioner's Exhibit #2, the radiology reports, reveal that an MRI of the lumbar spine done on January 7, 2011 and a CT of the lumbar spine done on March 17, 2011 revealed L5 spondylolysis with grade I anterolisthesis of L5 on S1. Subsequent diagnostic testing, including an MRI on July 13, 2011, revealed similar findings with no new disc bulge or herniation and without central canal or foraminal stenosis detected. A CT of the lumbar spine done on October 13, 2011 likewise revealed no central canal or foraminal stenosis.

The testimony of Dr. Gornet revealed that he rendered an opinion that the condition from which surgery was performed was related to the work accident of January 5, 2011.

Respondent provided the testimony of Dr. Michael Chabot, who conducted an independent medical examination of Petitioner on August 19, 2011, and rendered a report on that same date; and, in addition, rendered a supplemental report dated February 28, 2012, as well as providing deposition testimony. Dr. Chabot diagnosed a back strain and recommended no additional treatment for that sprain. Dr. Chabot further rendered the opinion that the surgery performed by Dr. Gornet for a pre-

existing condition for which the acts of daily living could have aggravated that condition. Dr. Chabot further noted that Petitioner was completely released by Dr. Gornet without restrictions and with a low level of pain. It was only when Petitioner had the intervening incident of July 11, 2011 when he got out of bed with increased pain and developed a sharp lower back pain that surgery was performed. Dr. Chabot therefore rendered the opinion that the condition diagnosed by Dr. Gornet and the subsequent surgery was not causally related to the work accident.

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner sustained a soft tissue back strain as the result of his injury on January 5, 2011 and that the Petitioner's current condition of ill-being was the result of an intervening incident on July 11, 2011 and therefore not caused by the January 5, 2011 accident. The evidence revealed that subsequent to the work accident Petitioner was treated with conservative care and suffered only mild low back pain. The Petitioner was released to complete and full duty subsequent to the work accident and, in fact, returned to work subsequent to that release. The Arbitrator notes that Petitioner sustained increased low back pain when he arose from bed on July 11, 2011. The above, along with the radiology reports and the testimony of Dr. Chabot, therefore, causes the Arbitrator to find that the back condition suffered in the work accident was a soft tissue or sprain injury that had resolved and from which the Petitioner had reached maximum medical improvement prior to the incident on July 11, 2011. The surgery performed by Dr. Gornet was to correct a pre-existing problem and not causally related to the work accident of January 5, 2011.

2. The Arbitrator finds that Petitioner sustained 5% permanent partial disability to the body as a whole, pursuant to Section 8(d)(2) of the Act. This finding is based on the medical records indicating Petitioner had sustained a soft tissue injury or back strain following his accident on January 5, 2011.

3. Respondent shall pay for any related medical expenses up through July 11, 2011. Based on the Arbitrator's findings regarding the issue of causation, the Arbitrator further finds that the claimed medical expenses of Dr. Gornet from July 11, 2011, up to and including the subsequent surgery are not related to the work accident.

4. Based on the Arbitrator's findings regarding the issue of causation, the Petitioner's claim for TTD from July 13, 2011 until December 2, 2011 is not related to the work accident of January 5, 2011 and is therefore denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ Affirm and adopt (no changes)	☒ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jennifer McCully,
Petitioner,

vs. NO: 11 WC 46458

14IWCC0259

River Rates Skating Rink
and State Treasurer as Ex-officio
Custodian of The Injured Workers' Benefit Fund ,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, permanent partial disability, medical expenses and wage rate and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0259

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 7 2014

Daniel R. Donohoo

Ruth W. White

Charles J. DeVriendt

o-03/26/14
drd/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

McCULLY, JENNIFER
Employee/Petitioner

Case# **11WC046458**

RIVER RATS SKATING RINK AND THE ILLINOIS STATE TRERASURER AS EX-OFFICIO CUSTODIAN OF THE INJURED WORKERS' BENEFIT FUND
Employer/Respondent

14IWCC0259

On 5/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1189 WOLTER BEEMAN AND LYNCH
RANDALL WOLTER
1001 S SIXTH ST
SPRINGFIELD, IL 62703

0382 ALVAREZ LAW OFFICE
R JOHN ALVAREZ
975 S DURKIN DR SUITE 103
SPRINGFIELD, IL 62704

ASSISTANT ATTORNEY GENERAL
ANDREW SUTHARD
500 S SECOND ST
SPRINGFIELD, IL 62706

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☒ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JENNIFER McCULLY
Employee/Petitioner

v.

RIVER RATS SKATING RINK and
THE ILLINOIS STATE TREASURER AS EX-OFFICIO CUSTODIAN OF THE ILLINOIS INJURED WORKERS' BENEFIT FUND
Employer/Respondent

Case # 11 WC 46458

Consolidated cases:

14IWCC0259

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **March 12, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

14IWCC0259

FINDINGS

On **December 17, 2010**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year prceding the injury, Petitioner earned **$6,864.00**; the average weekly wage was **$132.00**.

On the date of accident, Petitioner was **34** years of age, ***married*** with **1** dependent child.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$0.00** for other benefits, for a total credit of **$0.00**.

Respondent is entitled to a credit of **$0.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as set forth in Petitioner's Exhibits 1 through 7 (and as listed and discussed in the attached Memorandum of Decision of Arbitrator), as provided in Section 8(a) of the Act and subject to the medical fee schedule, Section 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of $132.00/week for 8 3/7 weeks, commencing 12/17/2010 through 02/14/2011, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $132/week for 71.75 weeks because the injuries sustained caused the 35% loss of use of the left hand, as provided in Section 8(e) of the Act.

The Illinois State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund (hereafter the "Fund") was named as co-Respondent in this matter. The Treasurer was represented by the Illinois Attorney General's Office. Award is hereby entered against the Fund to the extent permitted and allowed under Section 4(d) of the Act, in the event of the failure of Respondent-Employer, River Rats Skating Rink, to pay the benefits due and owing Petitioner. Respondent-Employer, River Rats Skating Rink, shall reimburse the Fund for any compensation obligations of Respondent-Employer, River Rats Skating Rink, that are paid to Petitioner from the Fund.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

05/03/2013
Date

MAY - 7 2013

STATE OF ILLINOIS)
)SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

JENNIFER McCULLY
Employee/Petitioner

v.

Case # 11 WC 46458

RIVER RATS SKATING RINK and
THE ILLINOIS STATE TREASURER AS EX-OFFICIO
CUSTODIAN OF THE ILLINOIS INJURED WORKERS'
BENEFIT FUND
Employer/Respondent

14IWCC0259

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

In approximately the late part of October 2010, Petitioner was hired by Respondent, River Rats Skating Rink, to work in Respondent's roller skating rink. Petitioner testified that she was issued a t-shirt that had the company name printed on it, a whistle and a pair of skates marked "DJ," as Petitioner served in the role of a disc jockey at the rink. Petitioner testified that she worked Fridays and Saturdays from 4:30 p.m. to 11:30 p.m., Sundays from approximately 12:00/12:30 p.m. to 2:30 p.m., and parties as needed. She testified that she was paid $8 per hour in cash.

Petitioner testified that her responsibilities included programming and monitoring music, interacting with patrons – particularly younger skaters and those that needed assistance – keeping the corners of the rink clear of patrons who were not skating, coordinating games designed for the skaters and operating the microphone. In short, Petitioner testified that she was to engage in any activity that promoted the safety and the entertainment of Respondent's patrons.

Petitioner was able to perform her multiple duties, as monitoring the music did not require her constant attention. Play lists could be programmed so that Petitioner was free to perform her other responsibilities. Petitioner testified that she could program up to 15 songs at a time, and would then at those times be free to roam around the rink performing her other duties.

On December 17, 2010, Petitioner testified that she and Respondent's patrons of various ages were participating in a game called "Jump the Stick." Petitioner testified that at this time, she was wearing her staff t-shirt and "DJ" skates, and participated in the game at the owner's request. While attempting to jump over the stick, Petitioner caught her skate and fell, landing primarily on her left hand.

Petitioner was initially taken to the Sarah D. Culbertson Memorial Hospital by Rodney Martin, her employer and Respondent's owner at the time. She suffered a comminuted fracture at the distal radius and ulna at the left wrist. (Petitioner's Exhibit (PX) 8). She was immediately transferred to St. John's Hospital for definitive orthopedic care. Her injuries were surgically repaired by Dr. Christopher Wottowa on

December 18, 2010. Dr. Wottowa reduced and stabilized the fracture and fragments with a TriMed plate and seven screws. (PX 9). Subsequently, she underwent physical therapy and was eventually released to return to work without restrictions on February 14, 2011. (PX 10).

Petitioner testified that her left wrist is now "usable," but it is not like it was before the accident. She testified she experiences a sharp pain when lifting, and that if the temperature is cold, her wrist feels numb and tingles. Petitioner also has scarring from the surgery at the wrist up into forearm that traverses approximately four inches up the arm from base of wrist. There is also a 1.25-1.5 inch similar scar on Petitioner's left wrist at the side of the base of the wrist.

Rodney Martin testified on behalf of Respondent. Mr. Martin confirmed that he hired Petitioner for weekend work in October 2010. However, he stated that her hours worked were 6:00 p.m. to 8:30 p.m. on Fridays, and 9:00 to 11:30 on Saturdays. He also confirmed that she did work at least one private party. He also confirmed that he paid Petitioner in cash, and that he did not withhold any deductions from her pay. He testified that he did not have workers' compensation insurance because he was not aware he needed it. Petitioner's Exhibit 11 confirms Respondent's lack of workers' compensation insurance coverage. Mr. Martin testified that he hired Petitioner as a disc jockey (DJ), and that this primarily required her to monitor songs for profane language. He testified that she also could leave the DJ booth to monitor the rink's corners. When asked if Petitioner assisted as a guard on the rink, he testified that he did not think that she did to his recollection. He testified that he did not give her skates, and that if she wore skates she would have gotten them on her own. Mr. Martin testified on cross-examination that Petitioner was subject to his direction as she was his employee.

Mr. Martin testified that two persons hold up the stick for the "Jump the Stick" game, and that at the time in question, he was holding the stick with Adam McCombs, an eighteen year old person who would assist him in exchange for the ability to skate at no cost. Mr. Martin testified that he did not see Petitioner in the line for the game until she had already jumped the stick and fell. Mr. Martin also confirmed on cross-examination that the purpose of the "Jump the Stick" game was to increase the patrons' enjoyment at the rink. Mr. Martin also testified that he never paid Petitioner her owed wages from the date of accident, which was a Friday, and further had no reason to give as to why he did not pay her for her time worked that day.

Mr. McCombs was called to testify by Respondent. Mr. McCombs testified that while not a "regular" employee of Respondent during the time in question, he nevertheless considered himself employed by Respondent. Mr. McCombs testified that he never saw Petitioner act as a floor guard. However, he testified that the DJ could also act as a floor guard.

Petitioner offered a series of medical bills into evidence containing charges for medical services she claims she received as a result of the claimed injury. (See PX 1-7).

The Illinois State Treasurer as ex-officio custodian of the Illinois Injured Workers' Benefit Fund was named as a respondent in this case due to Respondent, River Rats Skating Rink's lack of insurance coverage.

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

There is no question that Petitioner was employed at the time of her injury. She was fulfilling her job responsibilities during her regularly scheduled hours, wearing the clothing and equipment provided by Respondent, which indicated to patrons that she was an employee, and was subsequently paid for the time she worked. Her injury arose out of her employment as its origin was the result of a risk incidental to her job responsibilities. As compared to the general public, Petitioner was subject to an increased risk of injury and was performing a task in the furtherance of her employer's business. *See Quarant v. Industrial Comm'n*, 38 Ill.2d 490, 231 N.E.2d 397 (1967). Petitioner was carrying out a task that was foreseeable and consistent with Respondent's desire to safely entertain its invitees, and, therefore, her claim is compensable. *See Homerding v. Industrial Comm'n,* 327 Ill. App. 3d 1050, 765 N.E.2d 1064 (1st Dist. 2002). There was no evidence presented that Petitioner was engaging in activities for her personal benefit. Even if there had been such testimony, her claim would still be compensable as her conduct was encouraged and consistent with Respondent's business goals. *See Panagos v. Industrial Comm'n*, 171 Ill. App. 3d 12, 524 N.E.2d 1018 (1st Dist. 1988). At no time did Petitioner voluntarily and in an unexpected manner expose herself to a risk outside the reasonable exercise of her duties. *See Bradway v. Industrial Comm'n*, 124 Ill. App. 3d 983, 464 N.E.2d 1139 (4th Dist. 1984).

Further, Rodney Martin's testimony that Petitioner's sole responsibility was operating the music panel is not credible. Both parties agreed that the music could be programmed and it was not necessary for Petitioner to stay at that particular location the entire time. In addition, Petitioner was given a shirt clearly indicating to patrons that she was a representative of the rink. Petitioner also testified that she was given roller skates which would only be used on the skating floor and were marked "DJ." The Arbitrator further finds Petitioner a credible witness. She openly testified in a forthcoming and truthful manner.

Issue (F): Is Petitioner's current condition of ill-being casually related to the injury?

As a result of her fall, Petitioner sustained a comminuted distal radius fracture. During the open reduction Dr. Wottowa performed on December 18, 2010, he reduced and stabilized the fracture and fragments with a TriMed plate and seven screws. Petitioner has experienced no other trauma to her left arm, nor did she experience pain or loss of motion or strength prior to the December 17, 2010 injury. The scars on her left arm are the result of Dr. Wottowa's surgery.

Issue (G): What were Petitioner's earnings?

The Arbitrator finds Petitioner's testimony credible, as discussed *supra*, and therefore also finds that she was hired to work 7 hours on Fridays, 7 hours on Saturdays, and 2.5 hours on Sundays. She therefore worked 16.5 hours per week, and was paid $8.00 per hour. Her average weekly wage is accordingly $132.00.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

There was no evidence presented that the medical services provided by Sarah D. Culbertson Hospital, St. John's Hospital or Dr. Christopher Wottowa were unreasonable or unnecessary. The

comminuted, unstable distal radius fracture suffered by Petitioner required immediate treatment, and the subsequent physical therapy was designed to restore strength and mobility. (See PX 8-10). Nevertheless, none of the medical bills identified in Petitioner's Exhibits 1 through 7 have been paid by Respondent. They include the following:

1	Sarah D. Culbertson Hospital Statements – 12/17/10 – 2/14/11	$2,918.90	(PX 1).
2	Clinical Radiologists Statement – 12/17/10	$ 56.50	(PX 2).
3	St. John's Hospital Statement – 12/18/10	$18,488.40	(PX 3).
4	Central Illinois Radiological Associates Statement – 12/18/10	$ 84.00	(PX 4).
5	Sangamon Associated Anesthesiologists Statement – 12/18/10	$ 960.00	(PX 5).
6	APL Clinical Pathology Statement – 12/18/10	$ 31.00	(PX 6).
7	Dr. Christopher Wottowa Statement – 12/29/10 – 2/14/11	$ 3,667.00	(PX 7).

Respondent shall pay the foregoing charges, subject to the medical fee schedule, Section 8.2 of the Act.

Issue (K): What temporary benefits are in dispute? (TTD)

Petitioner was unable to work as a result of her injury from December 17, 2010 until the date of her release, February 14, 2011. As a result, she is entitled to temporary total disability benefits for a total of 8 3/7 weeks.

Issue (L): What is the nature and extent of the injury?

Petitioner sustained a comminuted distal radius fracture with multiple bone fragments. Her injury required surgical intervention. Her current wrist pain, numbness and tingling is the result of the fractured radius caused from the work injury. Based upon the foregoing, Petitioner has suffered the 35% loss of use of the hand pursuant to Section 8(e) of the Act, and should be paid permanent partial disability benefits accordingly.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Carrie Smith,
Petitioner,

vs. NO: 11 WC 21607

General Dynamics,
Respondent.

14IWCC0260

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, maintenance, medical expenses, and wage rate and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 7, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

14IWCC0260

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 7 2014

Daniel R. Donohoo

o-03/25/14
drd/wj
68

Ruth W. White

Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

SMITH, CARRIE
Employee/Petitioner

Case# **11WC021607**

GENERAL DYNAMICS
Employer/Respondent

14IWCC0260

On 5/7/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2500 WOMICK LAW FIRM CHTD
CASEY VAN WINKLE
501 RUSHING DR
HERRIN, IL 62948

0299 KEEFE & DEPAULI PC
JAMES K KEEFE SR
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Carrie Smith
Employee/Petitioner

v.

General Dynamics
Employer/Respondent

Case # 11 WC 21607

Consolidated cases: n/a

14IWCC0260

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on March 15, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☒ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, July 29, 2010, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $17,677.93; the average weekly wage was $631.35.

On the date of accident, Petitioner was 34 years of age, single with 10 dependent child(ren).

Respondent has paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $11,621.53 for TTD, $0.00 for TPD, $0.00 for maintenance, and $8,000.00 for other benefits, for a total credit of $19,621.53.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $420.90 per week for 33 2/7 weeks, commencing June 7, 2011, through September 2, 2011; September 19, 2011, through September 25, 2011; and October 10, 2011, through February 27, 2012, as provided in Section 8(b) of the Act.

Based upon the Arbitrator's conclusions of law attached hereto, Petitioner's claim for maintenance benefits is hereby denied.

Respondent is entitled to a credit for the advance payment made of $8,000.00.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

William R. Gallagher, Arbitrator
ICArbDec19(b)

May 3, 2013
Date

MAY -7 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on July 29, 2010. According to the Application, Petitioner was pushing/pulling while pumping up a pallet jack and sustained injuries to her neck. This case was tried as a 19(b) proceeding and Petitioner sought an order for payment of maintenance benefits from August 3, 2012, to the date of trial. At trial the disputed issues were causal relationship, average weekly wage and Petitioner's entitlement to maintenance benefits. Further, the parties stipulated that Petitioner was entitled to payment of temporary total disability benefits for 33 2/7 weeks and that Respondent was entitled to a credit of $11,621.53 for temporary total disability benefits paid during that time as well as an advance payment made by Respondent to Petitioner in the amount of $8,000.00.

Petitioner testified that on July 29, 2010, she was pumping up a pallet jack and, because it was malfunctioning, it would not come up more than an inch to an inch and one-half off of the ground. At that time, Petitioner felt a "pop" and burning sensation in the area of her left shoulder and arm. Petitioner reported the accident to her supervisor shortly after its occurrence. Petitioner was initially treated by Dr. Mark Austin who saw her on August 4, 2010. Dr. Austin's records contained a history of the accident of July 29, 2010, and he diagnosed Petitioner with a left cervical and trapezius strain. He also noted that the findings on examination were consistent with the C8 dermatome and similar to an injury that Petitioner had sustained the preceding year. Dr. Austin prescribed physical therapy which Petitioner received in July and August, 2010, with one final visit occurring on October 14, 2010. Petitioner was able to continue to work for the Respondent.

At the direction of the Respondent, Petitioner was examined by Dr. David Robson, an orthopedic surgeon, on March 17, 2011. Petitioner informed Dr. Robson of the accident of July 29, 2010, and Dr. Robson also reviewed Dr. Austin's medical records. At that time, Dr. Robson noted that Petitioner had previously had an MRI of the cervical spine performed on December 1, 2009. Dr. Robson recommended that Petitioner undergo another MRI to determine if treatment was indicated and whether there was a new injury or not. An MRI was performed on April 19, 2011, which revealed disc bulging at C4–C5, C5–C6 and C6–C7 as well as some degenerative changes.

Dr. Robson saw Petitioner on May 3, 2011, and reviewed both the report and films of the MRI that had just been performed. Dr. Robson opined that the C5–C6 was herniated and recommended Petitioner have a cervical discectomy and fusion performed. Dr. Robson further opined that Petitioner's condition and need for the surgical procedure were directly related to the accident of July 29, 2010. He did authorize Petitioner to continue to work. Dr. Robson performed surgery on June 7, 2011, which consisted of a discectomy at C5–C6, insertion of a spacer as well as a metal plate and screws.

Following the surgery, Petitioner remained under Dr. Robson's care. When Dr. Robson saw Petitioner on July 7, 2011, Petitioner reported that the left sided neck pain had resolved but that she was now experiencing pain down the right arm. When Dr. Robson saw Petitioner on August 11, 2011, Petitioner's right arm pain was improved but she then had more complaints of left sided neck pain. Dr. Robson stated that Petitioner should continue physical therapy and could

return to sedentary work, if available. The specific work restrictions imposed by Dr. Robson at that time were no lifting, pushing/pulling anything over 10 pounds, no overhead work, and that Petitioner needed to be able to change positions every 60 minutes. Respondent was able to provide work to Petitioner consistent with those restrictions; however, at that time Petitioner only worked for a very brief period.

On October 26, 2011, Dr. Robson had a CT scan performed to determine if the fusion was solid. The report of the scan stated that there was probable union with incorporation of the bone graft material. At that time, Dr. Robson opined that a functional capacity evaluation (FCE) was indicated. The FCE was performed on November 15, 2011, and the examiner opined that Petitioner was only capable of working in the "light" physical demand level; however, a program of work hardening was recommended so that Petitioner could progress to working in the "medium" physical demand level. Dr. Robson reviewed the FCE report and referred Petitioner to a program of work hardening. When Dr. Robson saw Petitioner on December 15, 2011, he opined that she was at MMI and released her to return to work with a permanent lifting restriction of 20 pounds and no overhead work. Respondent did provide work to Petitioner that conformed to Dr. Robson's restrictions.

Petitioner was seen again by Dr. Robson on July 25, 2012, and he again opined that Petitioner was at MMI and imposed permanent restrictions of no lifting over 20 pounds, no overhead work, no repetitive flexion/extension of the neck and that the maximum neck flexion should be 30°. Petitioner continued to work for Respondent within her restrictions until her employment was terminated by the Respondent on August 3, 2012.

A surveillance video of Petitioner was obtained and a DVD of it was tendered into evidence at trial. Petitioner was under surveillance on May 19, 25, 26 and 27, 2012. Subsequent to the trial of the case, the Arbitrator watched the video and observed that Petitioner mowed grass, operated a weedeater, made multiple attempts to pull on a string to start the weedeater, moved a decorative rock from one part of the yard to another, moved dirt in a wheelbarrow, dug in the garden and carried a large piece of plywood with both of her hands/arms. At trial, Petitioner testified that she had also watched the video and agreed that the decorative rock that she had moved weighed something in excess of 20 pounds and that this was in excess of the work restrictions imposed by Dr. Robson.

At the direction of the Respondent, Petitioner was examined by Dr. David Lange on December 4, 2012. Prior to that date, Dr. Lange reviewed Petitioner's medical records and the surveillance video. In his initial report of November 10, 2012, Dr. Lange opined that he disagreed with Dr. Robson's finding of causality and that Petitioner could work without restrictions. This was based, at least in part, on his belief that Petitioner had continued to work without restrictions until shortly before surgery was performed. Following his examination of the Petitioner, Dr. Lange reaffirmed his opinions in his report of December 4, 2012. Dr. Lange was deposed on March 7, 2013, and his deposition testimony was consistent with his medical reports.

Dr. Robson was deposed on October 4, 2012, and his deposition testimony was received into evidence at trial. Prior to his being deposed, Dr. Robson watched the surveillance video of the Petitioner and he reaffirmed his opinion as to Petitioner's work restrictions. Dr. Robson was not

persuaded to change the work restrictions he previously imposed on the Petitioner based upon the video and he noted that the video was only approximately one-half of an hour of observation of the activities of the Petitioner and he expressed doubt that Petitioner could perform activities such as those she participated in at the time the video was obtained over a 40 hour work week.

Subsequent to the termination of her employment with Respondent on August 3, 2012, Petitioner applied for unemployment compensation benefits and testified that she has been attempting to secure employment since that time. Petitioner tendered into evidence her job search logs for various jobs she has sought from August 6, 2012, through March 6, 2013. Petitioner testified that she has not been able to find any employment and is claiming entitlement to maintenance benefits from August 3, 2012, onward.

In regard to the average weekly wage, Petitioner claimed that the appropriate average weekly wage was $706.00. Respondent claimed that the average weekly wage $611.73. Petitioner submitted into evidence Petitioner's wage records for a period that began with the payroll ending August 9, 2009, through the pay period that ended June 27, 2010. Each pay period is two weeks long and there are 22 pay periods; however, the statement indicated that it pertained to a total of 42 weeks. Included in this statement were six pay periods which appeared to cover a period of 14 weeks in which Petitioner was paid short-term disability benefits. If the amount of the short-term disability benefits are excluded there is a total payment made to Petitioner of $17,677.93. The wage statement indicates that there are a number of pay periods in which the Petitioner worked substantially less than what would be considered a full time employee, specifically, the pay period ending October 4, 2009, Petitioner only work 14.5 hours; the pay period ending August 9, 2009, Petitioner worked 40 hours; and the pay period ending February 7, 2010, Petitioner worked 46 hours.

Respondent tendered into evidence the testimony of Kathy Wynn, Respondent's Human Resource Manager and Darren Byrd, Petitioner's immediate supervisor. Wynn testified that there was nothing reported about any malfunctioning of the pallet jack and that Respondent has an active light duty program and that Respondent made such light duty work available to Petitioner that conformed to Dr. Robson's restrictions. Byrd testified that Petitioner did not make any complaint to him about any malfunctioning of the pallet jack.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is related to the accident of July 29, 2010.

In support of this conclusion, the Arbitrator notes the following:

The Petitioner was initially examined by Dr. Robson at the direction of the Respondent and Dr. Robson subsequently became Petitioner's treating doctor. Dr. Robson opined that there was a causal relationship between the accident of July 29, 2010, and the cervical spine condition that he diagnosed and treated.

It was stipulated at trial that Petitioner did sustain a work-related accident on July 29, 2010, and Petitioner's testimony that she experienced a "pop" in her neck and experienced pain down her left arm was unrebutted.

In regard to disputed issue (G) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner had an average weekly wage of $631.35. In support of this conclusion the Arbitrator notes the following:

As stated herein, Petitioner claimed that she had an average weekly wage of $706.00 and Respondent claimed that the average weekly wage was $611.73. The Arbitrator reviewed the wage data and could not determine with any certainty how either side arrived at those amounts.

The wage statement is not a statement for the year preceding the date of injury. The statement includes payment of short-term disability benefits made to Petitioner between November 1, 2009, and January 10, 2010. When the short-term disability benefits are excluded, the net wages paid to Petitioner equal $17,677.93 which was paid over 16 pay periods or 32 weeks. The statement does indicate that Petitioner worked sporadically and there are pay periods in which she worked considerably less than a 40 hour work week. The Arbitrator lacked sufficient data to make a precise determination of the number of weeks and parts thereof worked by the Petitioner; however, the data seems to support that Petitioner worked 28 weeks. This computes to an average weekly wage of $631.35 ($17,677.93 divided by 28).

In regard to disputed issue (L) the Arbitrator makes the following conclusions of law:

Pursuant to the stipulation of the parties, the Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits from June 7, 2011, through September 2, 2011; September 19, 2011, through September 25, 2011; and October 10, 2011, through February 27, 2012, a period of 33 2/7 weeks.

The Arbitrator concludes that Petitioner is not entitled to maintenance benefits from August 3, 2012, onward.

In support of these conclusions the Arbitrator notes the following:

The parties stipulated and agreed to Petitioner's entitlement to temporary total disability benefits for aforestated periods of time.

Petitioner was released to return to work with restrictions and Respondent was able to provide work that conformed with those restrictions as testified to by Kathy Wynn, Respondent's Human Resource Manager.

The surveillance video clearly showed Petitioner participating in strenuous activities that exceeded the work restrictions imposed by Dr. Robson. Petitioner's participation in those strenuous physical activities is supportive of the opinion of Dr. Lange that she can work without restrictions.

In regard to disputed issue (N) the Arbitrator makes the following conclusion of law:

Pursuant to the stipulation of the parties, the Arbitrator concludes that in addition to the temporary total disability benefits paid by Respondent to Petitioner, Respondent made a further payment of $8,000.00 for which it is entitled to a credit.

William R. Gallagher, Arbitrator